Joint Center for Housing Studies

Harvard University

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I. Background

Modern project agreements have their roots in construction developments in World War II, and they emerged in the post-war era at atomic energy and space and missile sites. The defense program, begun in earnest following the fall of France in May 1940, required a large increase in construction activity. Federal government expenditures on new construction activity rose from $1, 397 million in 1940 to $3.85 million in 1941 and $9,544 million in 1942. Such demands for skilled labor came upon an industry that had been badly depressed in the 1930s. It was particularly difficult to man some projects in isolated areas, and double-time rates on hours over eight in the regular workweek and on extra shifts were often adopted to complete vital projects.

In this setting, the Office of Production Management (OPM), predecessor to the War Production Board, entered into a "stabilization agreement" adopted on July 22, 1941 on behalf of such contracting agencies as the Army and Navy Departments, with the Building and Construction Trades Department, AFL.[1] The agreement provided for uniform overtime rates of time-and-one-half for work beyond eight hours per day, on weekends and on holidays. It also provided for uniform shifts at regular rates. It specified the utilization of "specialty sub-contractors on those parts of the work which, under normal contracting practices are performed by specialty contractors." It further provided that wage rates on a project shall continue until completion of the project or not more than a year. It specified that in the pre-determination of wages under the Davis-Bacon Act by the Labor Department, rather than local prevailing rates, "consideration should be given to the rates prevailing in the area from which labor must be drawn to man the job." It declared, "that there shall be no stoppage of work on account of jurisdictional disputes, or for any other cause." (This no-work-stoppage pledge preceded the post

Pearl harbor AFL and CIO ledges on December 17, 1941.) The OPM agreement created a Board of Review from the procurement agencies and the building trades, and a representative of the Office of Production Management, to interpret this OPM agreement and to adjust disputes arising thereunder. Nothing in this "stabilization agreement" restricted employment by contractors to members of the 19 national unions affiliated with the Building and Construction Trades Department, AFL.

During the week of May 10, 1942 President Roosevelt called in the Executive Council of the Building and Construction Trades Department, AFL, expressing a concern over inflation, and proposed that the construction unions agree to the stabilization of wage rates on all war construction work done for or financed by the United States. The Agreement dated May 22, 1942 provided that wage rates paid under collective bargaining agreements as of July 1, 1942 shall remain in effect for at least one year after that date.[2] (This wage stabilization program preceded the wage and price control legislation of October 2, 1942.) Exceptional cases defined in the Agreement, were to be considered by a Wage Adjustment Board comprised of the federal contracting agencies, the building trade unions and a chairman from the Department of Labor.

The wartime construction of the nuclear plants at Oak Ridge, Tennessee and Hanford, Washington received special attention, although their output was unknown and secret. Joseph D. Keenan, an officer of Local 134 (Chicago) of the International Brotherhood of Electricians, joined the defense mobilization program in July 1940 as the building trades representative.[3] He describes being informed by Secretary of War Henry L. Stimson only "whoever gets this weapon first wins the war."[4]

Labor leaders were told that the work of the Manhattan Engineering District was one of the nation's top wartime secrets, and union activity could not be tolerated for security reasons.

They were asked to give up any organizing activity in the Manhattan Engineering District for the duration of the war. They were also asked to give full support to recruit skilled labor for these vital projects. To both requests the responsible union heads pledged full cooperation.

"Much of the credit for assembling skilled workers in such large numbers and persuading them to move to the remote atomic production locations belongs to organized labor. Unions affiliated with the AFL's Building and Construction Trades Department furnished the vast majority of skilled craftsmen for the original construction of the installations."[5]

Project-type agreements came to apply to construction activities on these atomic energy sites after the end of hostilities, and later these operating plants came under collective agreements.[6]

There were also in the early period isolated instances of individual private contractors entering into "exclusive agreements" to hire building and construction tradesmen as in the case of Guy F. Atkinson, general contractor, on the Denison Dam in Texas in 1940[7] and on the Shasta Dam in California the same year.[8]

Building on construction experience in World War II, the Korean War period and atomic energy facilities, in the early 1960s the Federal government explicitly adopted project labor collective bargaining agreements in its space and missile sites program. On October 19, 1961 the Missile Sites Labor Commission "recommended that a project stabilization agreement applicable to construction work at Cape Kennedy be negotiated." On February 20, 1962 such an agreement was entered into by a joint committee representing contractors and 14 international unions representing the Building and Construction Trades Department, AFL-CIO.[9]

The agreement standardized hours of work, provided for multiple shift operations at a uniform premium and supplied a consistent approach to overtime arrangements and premiums. It

provided a maximum amount of travel pay. “Non-union employers not a party to the agreement were required to comply with all of its provisions, except those concerning union representation, and were deemed to have complied with the ‘money provisions’ by paying the money equivalent of such fringe items as health and welfare benefits, pensions, etc. in the form of supplementary benefits.” The agreement provided for a no-strike, no-slowdown provision and machinery for the settlement of jurisdictional disputes and grievances. The reported difficulties of union and nonunion contractors working on the same project, such as the frictions between electricians working for union and nonunion contractors to access the same manhole, contributed to the Commission’s recommendations.

“While the Project Stabilization Agreement tended to standardize the monetary compensation paid to workers as between union and non-union (or open shop) contractors, it did not dull a growing unrest among union workers over the employment of non-union help.”[10] A number of brief stoppages occurred, despite the no-stop provisions of the Agreement, particularly over contractors who operated under union agreements elsewhere but sought to operate non-union on parts of the project. At bottom, the Commission and the procurement agencies in late years of the project had somewhat conflicting views of the relations between procurement policies and labor policies for the project.

“Experience in Cape Kennedy under the project agreement, however, encouraged NASA to request the Commission to endorse a similar agreement for the Mississippi Test Facility.”[11] On March 21, 1963 the Commission extended its jurisdiction over that facility and endorsed the idea of a project agreement for construction activity at that site; a negotiated agreement was put in place.

At the Nevada Test Site, outside of Las Vegas, a vital project for the country's nuclear program with underground testing, the Federal Mediation and Conciliation Service established a continuing committee of neutrals to resolve construction disputes in the years 1965-67. A project agreement was developed that included a variety of specialized provisions related to the isolated location of the project, including travel time and travel pay. The agreement persists currently providing stability to these sensitive operations.

(A) In the 1950s another application of project agreement developed – the maintenance agreement by contract. This work was not new construction on a new or demolished site but rather work assigned by an owner to a contractor employing building tradesmen engaged in the repair, renovation, revamping and upkeep of property, machinery and equipment. The periodic turnarounds and upkeep of oil refineries, chemical plants, and steel mills, for example, by contractors and their building trades crews, in the Philadelphia area with Catalytic Construction Company were among the early applications. The availability of skilled crews of boilermakers, iron workers, pipefitters, millwrights and electricians, for instance, particularly in winter months when outside new construction was down, made such maintenance work attractive to all parties. These trades had often been involved in the initial construction of these plants, and individual craftsmen were familiar with the specialized features of the installations.

The Building and Construction Trades Department adopted the General President's Project Maintenance Agreement By Contract standard form first in September 1956, with subsequent revisions.[12] It was made generally available to contractors across the country with a commitment or contract from an owner for maintenance, repair and renovation work. The agreement includes a non-strike and no lockout provision and a grievance procedure with binding arbitration. The General Presidents of the International Unions that comprise the

Department are signatories to the agreement along with the contractor authorized by the owner to perform the work.

The Construction Labor Research Council[13] reported in November 2000 that "the National Maintenance Agreement (NMA) is a proven cost effective vehicle for construction contractors and skilled building tradesmen to perform maintenance and repair work for the nation's industrial and manufacturing base. Even excluding accommodations for unique situations, the NMA can reduce labor costs, without reducing wages, by up to $3.39 or about 16 percent of the hourly wage rate. [Compared to local or area collective agreements in construction] the NMA Agreement eliminates the more costly practices sometimes found in local agreements and permits added savings through flexibility and standardization."

The Construction Industry Joint Conference, a cooperative organization of building trades unions and the national contractor organizations of general and specialty contractors, including the National Association of Home Builders, in the period 1959-67 widely promoted maintenance by contract. Some industrial owners, such as electric utilities, have chosen to perform maintenance and renovation work by contract but have elected to enter into a collective agreement with a local building trades council, using a variety of local contractors, rather than utilize the General Presidents' Project Maintenance Agreement. The long-running Powerhouse Maintenance-Modification Agreement between Commonwealth Edison and the Chicago Building Trades is illustrative.

(B) In 1971 another form of the Project Labor Agreement by Contract was created when the National Maintenance Agreement Policy Committee, Inc. (NMAPC, Inc.) was created as the "construction industry's first legally incorporated labor-management committee." Its contractor members perform maintenance and repair work using workers represented by the international

unions comprising the Building and Construction Trades Department. The NMAPC, Inc. reports that the number of signatory contractors to the agreement has ranged between 3,436 and 3,494 in the past decade. The industries served in order of rank in 1999 were autos, utilities, steel, petroleum, chemicals, etc. The most frequently used crafts by hours worked were plumbers and pipefitters (20.4 percent of the total hours), boilermakers (14.8 percent), carpenters (14.4 percent), laborers (12.4 percent), iron workers (11.9 percent), electricians (6.6 percent), with all craft organizations in the Department with some share of employment.

The NMAPC, Inc. reports that since its inception its program has accounted for over $245 billion of work in place and over 1.3 billion manhours of work for craft workers. Recent years have averaged approximately 70 million work hours per year.

Formal project agreements on new construction were negotiated for privately owned facilities initially on single projects of large scale and long duration, and often outside large metropolitan areas with a full complement of manpower. The Disney World agreement in the 1960s is one example. The Alaska Pipeline project between Valdez and the North Slope in the 1970s is another. The Toyota plant in Georgetown, Kentucky and later its truck plant in Indiana were also built under such nationally negotiated and signed project agreements. Other new construction projects were constructed under locally negotiated agreements and signed by local building trades officers and affiliated locals.

In the 1970s and 1980s there developed nationally negotiated project agreements between the Building and Construction Trades Department and groups of contractors engaged in building particular types of projects, or associations of contractors engaged in construction of a category of projects for private or public owners – federal, state or local or various public authorities.

(C) The Nuclear Power Construction Stabilization agreement became effective on April 1, 1978 and included as signatories the Building and Construction Trades Department, AFL-CIO and its national unions and the major designers and builders of Nuclear Power plants – Bechtel Power Corporation, Ebasco Services, Inc., Stone and Webster Engineering Corporation and United Engineers and Constructors, Inc.[14] The agreement was applied to a number of on-going plants, such as Portsmouth, New Hampshire, that had been begun under a local project agreement, as well as to new plants as at South Texas. The agreement was a "full and complete national agreement that does not depend on other collective bargaining agreements in the construction industry, whether local, regional or national in scope." The agreement was nationally administered by a joint labor-management committee and an agreement umpire. The agreement went out of use when the country ceased to build new nuclear power generating plants in the 1990s.

(D) The National Construction Stabilization Agreement between the National Constructors Association and the Building and Construction Trades Department, AFL-CIO, was entered into on February 17, 1987 and applied to construction companies and divisions electing to be party to the agreement.[15] A Joint Administrative Committee was responsible for the operation of the agreement. The agreement provided that there "shall be no strikes, picketing, work stoppages, slow downs or other disruptive activity for any reason by the Union, its applicable local unions or by any employee and there shall be no lockout by 'the Employer'." An arbitration procedure, enforceable in the courts, was designed to support this provision. The Agreement was designed to set out "standard working conditions for the efficient prosecution of construction work." The agreement also specified that the Employer "shall have the unqualified right to select and hire

directly all supervisors it considers necessary and desirable without such persons being referred by the Unions and/or their respective local unions."

The Joint Administrative Committee reported in mid-2000 that 93 projects valued at $19.3 billion had been completed or were still under construction since the inception of the agreement in 1987. Most of these projects were for private owners – utilities, co-generation facilities, refineries, chemical plants, paper mills, manufacturing plants and a Las Vegas hotel. Some projects were constructed for the Defense Department, including the Army and Navy, and a few had as owners municipalities as with wastewater treatment plants and municipal utilities. These projects widely distributed through the country tended to be large scale, with the medium-sized project in recent years in the range of $150 to $250 million dollars and a few of a billion dollars or more.

(E) A further form of project agreement addressed to a specialized type of construction is the Heavy and Highway Agreement that was first developed in 1954 by four constituent crafts, apart from the Building and Construction Trades Department. For the limited period, 1997-2002, the National Joint Heavy and Highway Construction Committee merged into the Department, constituting a Division with eight affiliated international unions – Laborers, Carpenters, Operating Engineers, Cement Masons, Bricklayers, Ironworkers, Painters and Teamsters. The division states that "simply put, its goal is to increase union market share by winning projects against nonunion competition. Our primary tool to accomplish this objective is the Heavy and Highway Construction Project Agreement."[16]

The Heavy and Highway Division reports that in the ten year period, 1990-99 it obtained $4.5 billion dollars of construction work on 249 projects in 27 states and the District of Columbia built by 52 different general contractors. The types of projects include marine, bridge,

rapid transit and light rail, highway and hydro/pump station work. The arithmetic average of the dollar size of these heavy and highway projects approximates $18 million, much smaller that the new construction projects referenced above under the National Construction Stabilization Agreement with an arithmetic average approximating $200 million.

The preceding brief background to the development of contemporary construction project labor agreements emphasizes that they have had a long history with roots back to public construction developments on dam projects in the West and South and in the World War II and the Korean War eras and the atomic energy and missile sites programs. Also, various types of project agreements have been developed by the Building Trades Department, national unions, major contractors and associations, and private and public owners to fit specialized markets of new construction and maintenance and repair operations. Project agreements have been utilized on a significant number of larger jobs of longer duration by federal government agencies and their contractors, by state and local governments and their agencies and predominantly by private owners and their managing contractors. These agreements have not significantly displaced conventional craft area collective bargaining agreements that have characterized construction for a hundred and fifty years, except on major projects and specialized types of construction and maintenance, and even there area agreements are influential as reference provisions for many features of project agreements.

II. The Extent of Project Labor Agreements in New Construction

On May 14, 1997 the Building and Construction Trades Department sought to impose national standards of process and substance on state and local building and construction councils

in the negotiations of project agreements. Its directive provided for new construction a copy of the "standard project agreement that must be utilized in the negotiation of all project labor agreements." The directive also specified the steps to be followed by a state or local building and construction trades council before a project labor agreement is negotiated and executed.

An application to the Department on a standard form is required and approval authorized before the council is authorized to commence negotiations for a project labor agreement. A negotiated project labor agreement may not be executed without first submitting it to the Department and receiving written approval.[17]

This directive was developed in part to reduce the extent of legal challenges to local negotiated project labor agreements that contained clauses open to legal challenge. In part there was concern that projects of limited size, duration and scope might be included that were more appropriate to regular craft locality or area collective bargaining agreements. It sought to focus local and state building trades councils on their main collective bargaining activities and to prevent unauthorized use of national presidents' authority.

Among the provisions of the standard form were clauses providing as follows:

- The project contractor shall require all contractors, regardless of tier, awarded work covered by the Agreement to accept and be bound by the terms and conditions of the project agreement.
- Where there is a conflict between the project agreement and other national, area, or local collective bargaining agreements, the terms and conditions of the project agreement shall prevail, except for the International Union of Elevator Contractors whose work shall be performed under its national agreements.

- No contractor signatory to the project agreement will be obligated to sign any other local, area or national agreement.
- The owner or the project contractor have the absolute right to select any qualified bidder for the award of contracts on the project without reference to the existence of non-existence of any other collective bargaining agreements. (Nonunion contractors have every right to bid and perform work under the project labor agreement.)
- The contractors recognize the signatory unions as the sole and exclusive bargaining representatives of all craft employees working on the project within the scope of the Agreement.
- The contractors shall utilize the most efficient methods or techniques of construction, tools, or other labor saving devices. There shall be no limitations upon the choice of materials or design, nor shall there by any limit on production by workers or restrictions on the full use of equipment. There shall be no restrictions, other than may be required by safety regulations, on the number of employers assigned to any crew or to any service.
- There shall be no strikes, picketing, work stoppages, slow downs or other disruptive activity for any reason by the International Union, its applicable local union or by any employee, and there shall be no lockout by the contractor.
- A grievance procedure with binding arbitration is provided.
- Matters of apprentices, helpers and sub-journeymen, along with wages and benefits, hours of work, safety and health, etc. are left to local bargaining.

The directive of May 14, 1997 had the virtue, for present purposes, of providing a relatively reliable central file of project labor agreements that were approved for new construction projects, apart from agreements applying to repair and modernization projects, to heavy and highway projects and projects under the National Construction Stabilization Agreement. (See A, B, D and E above.)

Thus from May 1997 through the year 200 it is possible reasonably to quantify certain information on project labor agreements, on new construction, outside of those constructed under the Heavy and Highway Agreement and the National Construction Stabilization Agreement, more accurately that for earlier years. The information on project labor agreements under the Department's standards promulgated May 14, 1997 are reported as follows for the four years:

	Number of Project Agreements Approved	Owners		
		Private	Public	Mixed
1997, after April	40, plus 5 under local or NCSA agreements	20	18	2
1998	39, plus 1 under other agreements	20	19	
1999	29	19	10	
2000	33	10	12	1

The tabulation divides the number of approved project agreements between private and public owners for each year. (The mixed private and public projects refer to an arena in Los Angeles and stadiums in Seattle and Hartford.)

The additional data for projects under the National Construction Stabilization Agreement for the same period are reported as follows:

	Number of Projects	Owners	
		Private	Public
1997, after April	3	3	
1998	11	10	1
1999	16	15	1
2000	12	10	2

In aggregate, in the period 1997-2000 the number of projects agreements on new construction under the Department's procedures of May 14, 1997 plus the National Construction Stabilization Agreement ranged from 35 to 50 a year. In general, in recent years projects under the National Construction Stabilization Agreement have been significantly larger, averaging $200 to $300 million compared to those approved under the Department's procedures that have been in the $100 million range. Further, the National Construction Stabilization Agreement has been largely for private projects, except for a few federal military projects, while the Department's procedures have been applied to private and public projects almost equally, save that the public projects are largely for state and local government purposes, such as schools, airports and water replenishment. There has been wide variability in the size of projects under the Department's procedures, from a few million dollars for a hospital renovation project in West Virginia to almost a half a billion dollars for a football stadium in Seattle.

III. Features of Project Labor Agreements

(1) Project labor agreements typically specify that their duration shall be for the period required to complete the construction activities on the particular project, be it months, years or even more than a decade. In contrast, craft area collective bargaining agreements in construction have a fixed duration before they expire or may be reopened; in recent years, typically three years. Thus, the project agreement, with their strict no-strike and no-lockout provisions are designed to preclude otherwise perfectly legal work stoppages when the area craft collective bargaining agreements of those crafts working on the project expire by their terms during the duration of a project.

On a large project of even several years' duration it is likely that a number of local area craft agreements would expire or be reopened with risks of stoppage of work if only the craft area agreements applied and in the absence of the overarching project agreement with its prohibition of work stoppages for the duration of the project.

(2) Project labor agreements provide the means to standardize certain terms and conditions of employment, and thereby to facilitate more efficient operations, that characteristically may differ among area craft agreements as in the practices of various nonunion contractors. Among the most obvious of these conditions are starting and ending times, break or rest periods and how taken, lunch periods, the standard work day, shift work and schedules, holidays and rates, overtimes rates per day, per week and for weekend and holiday work. Provisions that specify that four ten-hour days may be worked each week at straight time rates often have operating economies. On some projects standard reporting locations for work, standard means of transportation, and any travel time or travel pay among crafts may be critical to efficient performance.

Disparities in other working conditions in craft area agreements are standardized under project labor agreements – safety committees, standard safety instructions, including drug and alcohol policies. Standardized grievance and dispute setting procedures; including a common arbitration provision, are commonplace in project labor agreements.

Project agreements typically provide that in the event any provision of a craft area collective bargaining agreement is inconsistent or at variance with the project labor agreement, the project labor agreement shall prevail. In the language of one project agreement: "Where a subject covered by the provisions of this Project Labor Agreement is also covered by the Collective Bargaining Agreement which serves as the basis for the attached Schedule A or B, the

provisions of this Project Labor Agreement shall prevail." This Project Labor Agreement further provides for a designated arbitrator to resolve any dispute between a craft area agreement and the project labor agreement.[18]

(3) Project labor agreements facilitate the task of managing large projects of long duration with strict time deadlines by recognizing a single managing contractor for the project and the means of coordinating the activities of various prime contractors and their sub-contractors through standardized terms and conditions of employment, as noted above, and through the capacity to locate stock piles, tool sheds and points of access and egress for various operations. The managing contractor represents the owner and provides a central point of contact and decision-making. It is often an advantage to an owner to deal with a single managing contractor rather than a number of general and specialty contractors. The managing contractor characteristically performs little or no craftwork; the project manager serves strictly as manager of the project including the various prime including sub-contractors with their assigned tasks and timing of operations. The project agreement with its standardized provisions provides the project management an essential tool for coordination and management of operations for the project as a whole.

(4) In some localities on some large projects there may be legitimate questions as to whether area building construction, heavy and highway, pipeline, or tunnel terms and conditions of employment and compensations rules shall apply to particular operations on the project. A project labor agreement typically resolves these issues in advance or provides procedures to resolve them without a work interruption.

(5) On large projects, often under strict time deadlines, with or without financial penalties, shortages of particular craft skills in a local area are rather common in ordinary times without

boom conditions. Such skills as tunnel-workers, boilermakers and specialized craft welders are illustrative. Recruitment from a larger area or even nation-wide is essential. Such search and recruitment is often facilitated by a project agreement through national union efforts with project manager support. National representatives are able to target jobs elsewhere that are laying off craftsmen with the completion of work operations as well as pockets of local unemployment nationally. Moreover, a project manager is able to estimate and coordinate better the manpower requirements of separate contractors on a project at varying stages of operations and influences the allocation of new workers to particularly critical activities at each stage of the project.

Another source of workers for a construction project under a project agreement is the apprenticeship programs in the area or elsewhere. Workers may be assigned various steps in the apprenticeship wage ladder, or sub-journeymen status, if specified, according to their proficiency and even continue their related, or classroom, education and training.

(6) Although a number of local buildings trade councils and their affiliated local unions have initiated project labor agreements and been the sole union signatories, project labor agreements on the union side typically are also signed by the national union presidents and the officers of the Building and Construction Trades Department. These national signatures and the assignment of national union staff stand as a further guarantor of compliance. Resort to the national levels for redress has proven typically to be more effective and rapid in the resolution of a wide range of disputes or problems than resort to local unions alone or to administrative agencies or government or the courts.

(7) A number of states have authorized parties to collective bargaining agreements in construction to negotiate "carve-outs" from the state workers compensation system.[19] A "carve-out" authorizes the parties to design a worker compensation system for evaluation, treatment and

claims dispute resolution that operates for the project as a whole as distinct from that applicable to individual contractors. The negotiated system ordinarily involves the resort to panels of physicians and health care providers selected by the parties, the use of an ombudsperson to advise workers on injury and appropriate claims, as well as mediation and arbitration procedure to resolve any disputes. The alternative dispute resolution procedure is a substitute for the regular state workers compensation board. In general, "carve-out" programs have resulted in lower insurance premiums from insurance carriers as the result of more effective programs designed for a particular project to care for workers with accidents and typically with less litigious costs of administration.

At times, owners, rather than project managing contractors, may decide to use and owner-controlled insurance program that passes the savings attribute to the "carve-out" directly to the owner. The entire cost of workers compensation is taken out of all of the bids of the separate prime and sub-contractors. The design of accident prevention, health care following accidents and a dispute resolution system with the characteristics and location of a particular project as a whole in mind can be expected to be more effective and efficient than the general state-wide system, although the level of benefits for specific accidents must correspond at least to state-wide standards.

The project agreement on large projects of considerable duration provides the opportunity to constrain and restrict the costs of accidents and ill-health in a variety of ways though prompt medical attention and first aid, prompt access to medical facilities, standardized testing, reduced workers' compensation costs through carve-outs, and improved safety coordination among the tasks of prime and sub contractors.

(8) It follows from the preceding discussion of features of project labor agreements that not all construction projects or operations are appropriate for a project agreement. The size, duration, scope, isolation, craft and contractor composition of the project, the management structure for the project, and the problems likely to be confronted may not warrant a separate project agreement, distinctive from the separate local or area craft agreements.

IV. Comments on Issues in the Public Policy Debate

The Associated Builders and Contractors Association in the past decade has spearheaded a broad legal, and public relations[20] attack against project labor agreements in construction. Its legal attack in the federal courts against the Boston Harbor Project Labor Agreement between Kaiser Engineers, Inc., the Project Contractor on behalf of the Massachusetts Water Resources Authority, and the Boston Building and Construction Trades Council dated May 22, 1989 resulted in a 1993 unanimous supreme court decision supporting the agreement and against the legal charges asserted against the agreement.[21]

The Associated Builders and Contractors Association continued to challenge in state courts the legality of other project agreements entered into by state and local governments and their authorities, or project constructors, on their behalf, engaged in large-scale construction. The state courts have applied the competitive bidding law principles of state legislation finding most project labor agreements meeting those standards and some not in compliance.[22] Moreover, a number of state legislative bodies and executives had explicitly authorized project labor agreements. New Jersey is such an illustration.[23]

President George W. Bush, on February 17, 2001, less than a month after taking office, issued Executive Order 13202 that prohibited project labor agreements, as they have developed,

or any project with federal government funding. This Executive Order was amended on April 6, 2001 to exclude from the prohibition project labor agreements that were already in effect with construction contracts clearly awarded under a project labor agreement. New project agreements involving federal funding are precluded. In November 2001 Judge Emmet J. Sullivan of the U.S. District Court for D.C. issued a permanent injunction against the Executive Order on the grounds that the President "exceeded his constitutional and statutory authority."[24] But on July 12, 2002 the U.S. Court of Appeals for D.C. overrode the District Court and held that the President "had authority under Article II of the Constitution of the United States to issue Executive Order 13202."[25] The end of litigation is not likely.

The stated purposes of the prohibition in Executive Order13202 are as follows, to "(1) promote and ensure open competition on Federal and federally funded or assisted construction projects; (2) maintain government neutrality toward government contractors = labor relations on Federal and federally funded or assisted construction projects; (3) reduce construction costs to the Federal government and to the taxpayers; (4) expand job opportunities especially for small and disadvantaged businesses; (5) prevent discrimination against government contractors or their employees based upon labor affiliation or lack thereof."

Executive Order 13202 was issued without hearing or formal administrative study. It prohibited a form of construction contracts applicable to major projects that the Federal government has utilized for more than half a century and that is widely used in the private sector. The politicization of construction project contracts involving federal funding on a national basis rather than leaving the choices as in the past to the discretion of individual federal, state or local agencies constitutes a new level of political influence into project decisions.

(1) It seems somewhat strange that no legal or public relations attack, of which I am aware, has been made on project agreements covering projects for private business or non-profit owners, which have constituted the largest proportion of all project agreements in the past decade. One would have thought that if private organizations, such as Toyota, Boeing, Inland Steel, Arco and Harvard University – to name a few – as well as a host of paper product, electric utilities and chemical plant owners, indeed hundreds of projects in the past decade, have voluntarily used project agreements for new construction that these arrangements and processes would be appropriate for certain projects for state and local governments and their authorities in their managerial as distinct from their regulatory functions. Many of the private owners are repeat users of project labor agreements. It is apparent that project labor agreements have met the private market test. The private experience would seem to validate the public use of project labor agreements for appropriate new construction projects and to override much of the criticism, particularly that based on costs, economy and efficiency.

Moreover, it has long been federal policy on public construction, or federally financed construction, to standardize wage and benefit rates, requiring bidding contractors to compete on the basis of efficiencies rather than on variation in wage and benefit rates. Many states have adopted similar policies. These policies eliminate considerable variation in bidding prices that arise on privately financed construction work where government pre-determinations of wage rates and benefits do not apply.

(2) A criticism leveled at project labor agreements on public projects, it is argued, is their adverse impact on competition by reducing the number of bidders, particularly non-union contractors, willing to submit bids under project labor agreements. The smaller number of bidders, due to the unwillingness of non-union contractors to work under the terms of project

labor agreements, it is said, result in higher prices to public owners. The more contractors you can bring to a bid opening, the better your chances of saving money.

But this general argument is of very limited application and does not well fit the circumstances of project agreements in most communities.

(A) Project agreements, as has been observed, are applied to large-scale and complex projects of considerable duration, and major bid offerings attract contractors from a wide area, if not nation-wide. The pool of contractors is typically larger than for a routine project in an area.

(B) There is considerable evidence that some nonunion contractors do in fact bid, win work on project labor agreements and perform the contract. The records of the Boston Harbor Project[26] and the Southern Nevada Water project are incontrovertible that a significant number of nonunion contractors have been successful bidders and performers on these projects, although the precise numbers may be in dispute.

(C) The analytical argument is not supported in practice. While there is merit in the view that more than a few qualified contractors are essential for a competitive market, it does not follow that the more the number of bidders – beyond a number – the lower the bid prices particularly where wage rates, benefits, and working conditions have been standardized and where all contractors are typically authorized to use their regular supervision under project agreements. On public projects with federal or state funds, the prevailing wage statutes apply, that also are applicable to some benefits, tending to standardize labor costs. The dispersion in bids arises on ordinary projects more from the disparities in factor prices than from the efficiencies and varying financial aspirations of bidders. There is no analytical reason to believe that increasing the number of bidders beyond some relatively small number tends to reduce

prices unless one advances the heroic assumption that nonunion contractors are inherently more efficient (with common factor prices) than all other contractors.[27]

(3) A public relations attack on project labor agreements has included comparing final costs for a specific public project with estimated or originally bid prices for that project. But as is well known, change orders by owners and their architects, after estimates and bids, are a major source of variation and cost "overruns." The Construction Industry Institute of Austin, Texas in its research study, *Change Orders and Their Cumulative Impact*, found "a strong correlation between the number of change items on a project and some loss of labor productivity."[28]

The methodology of this criticism of project agreements is fundamentally flawed. Without detailed information on change orders and other external factors, a comparison of bid prices and final costs permits few conclusions on any project, or between projects, be its labor policy a project agreement, conventional or local area agreement, a mixed policy, or totally nonunion.

(4) Much of the public discourse on project labor agreements presumes that their provisions are identical, a single template imposed on a local project. But this is not an accurate picture. A comparison of even the standard heavy and highway agreement, the several maintenance and renovation agreements, the National Construction Stabilization Agreement and the May 1997 standard agreement reflect the various markets in which construction is bid and performed. Moreover, a review of provisions of project agreements on new construction, signed recently by national presidents, and the Building and Construction Trades Department and certainly agreements signed only locally, reflect adaptation to local conditions, aside from wages and benefits and operating conditions. Among such items are the provisions relating to supervision and "core employees" a contractor may utilize on the project from previous employment, and

how defined, rather than to hire solely through the union hiring halls. The penalties for any violation of the no stoppage of work provisions, and defined, vary from significant fines to measures solely directed to return to work and elimination of the volatile practices such as slow downs. Further, project labor agreements may differ in the extent to which local or area craft agreements are applicable to the project. Some project agreements provide for preference in employment to local residents, the disadvantaged and minority contractors. There is in practice a range on issues to be negotiated rather than a single standard form.

Notes

[1] For the text of the OPM agreement or July 22, 1941, see John T. Dunlop and Arthur D. Hill, *The Wage Adjustment Board, Wartime Stabilization in the Building and Construction Industry,* Cambridge: Harvard University Press, 1950, pp. 138-40.

[2] For the text of the Building and Construction Trade Wage Stabilization Agreement of May 22, 1942, see John T. Dunlop and Arthur D. Hill, Ibid., pp. 141-142.

[3] Francis X. Gannon, *Joseph D. Keenan, Labor's Ambassador in War and Peace, A Portrait of a Man and His Times,* Lanham, Maryland: University Press of America, 1984, pp. 1-15; 35-36.

[4] Ibid., p. 4.

[5] Donald B. Straus, *The Development of a Policy for Industrial Peace in Atomic Energy*, Washington D.C.: National Planning Association, Planning Pamphlets 71, 1950, p. 9.

[6] See *Report of the Secretary of Labor's Advisory Committee on Labor Management Relations in Atomic Energy Installations*, January 31, 1957, David L. Cole, Chairman.

[7] *Report of Proceedings to the Thirty-Fourth Annual Convention of the Building and Construction Trades Department, American Federation of Labor, November 1940*, p. 89.

[8] U.S. Department of Labor, Labor-Management Services Administration, *The Bargaining Structure in Construction: Problem and Prospects*, Washington, D.C. 1980, p. 14.

[9] Wayne E. Howard, *The Missile Sites Labor Commission, 1961 Thru 1967*, Washington, D.C.: The Federal Mediation and Conciliation Service, p. 20.

[10] Ibid., p. 22.

[11] Ibid., p. 21.

[12] For the text, see, *General Presidents' Project Maintenance Agreement by Contract*, September 1956 and subsequent revisions.

[13] Construction Labor Research Council, 1730 M Street, N.W., Suite 503, Washington, D.C., 20036, Robert Gasperow.

[14] For the text, see, *The Nuclear Power Construction Stabilization Agreement*, dated April 1, 1978.

[15] For the text, see *National Construction Stabilization Agreement*, entered into February 17, 1987 and subsequent revisions.

[16] For the text, see *Heavy and Highway Construction Project Agreement*, A Partnership between the Building and Construction Trades Department, AFL-CIO, Heavy and Highway Division, and the North American Contractors Association, entered into May 20, 1998.

[17] These procedures have not been followed uniformly. "The president of the AFL-CIO's Building and Construction Trades Department June 6, 2002 called it outrageous that construction of the $150 million Clinton Public Library will not be done with 100 percent union workers, but said the department will not oppose a project labor agreement negotiated by unions in Little Rock, Ark." (75 percent of the 350 building tradesmen needed on the project would be referred from local hiring halls.) Bureau of National Affairs, Daily Labor Report, June 11, 2002, pp. A3-4.

[18] *Boston Harbor Project Labor Agreement between Kaiser Engineers, Inc. and Metropolitan District Building and Construction Trades Council*, May 22, 1989.

[19] Kimberly Johnson-Dodds, *Constructing California: A Review of Project Labor Agreements*, manuscript, October 2001, pp. 59-60.

[20] See Maurice Baskin, "The Case against Union-Only Labor Project Labor Agreements in Government Construction Projects," *Journal of Labor Research*, Winter 1998, pp. 115-124.
Also see in the same journal issue, "Symposium, Government-Mandated Project Labor Agreements in the Construction Industry," pp.1-24. Also see Herbert R. Northrup and Linda E. Alaris, "Government-Mandated Project Labor Agreements in Construction, The Institutional Facts and Issues and Key Legislation," *Government Union Review*, vol. 19, no. 3, 2000.

[21] *Building and Construction Trades Council, etc. v. Associated Builders and Contractors*, 507 U.S. 218 (1993).

[22] See Bradford W. Coupe, "Legal Considerations Affecting the Use of Public Sector Project Labor Agreements: A Proponent's View," loc. cit., pp. 99-113.

[23] Bureau of National Affairs, *Daily Labor Report*, August 2, 2002, pp. A1-2.

[24] *Building and Construction Trades Department, AFL-CIO v. Joe Allbaugh, Director, Federal Emergency Management Agency*, No. 01-0902 (egs).

[25] *Building and Construction Trades Department, AFL-CIO v. Joe Allbaugh, Director, Federal Emergency Management Agency*, No. 01-5436.

[26] *Hearings of the Committee on Labor and Human Resources of the United States Senate*, 105 Cong., 1st sess., April 30, 1997, pp. 44-47.

[27] For the conventional argument, see Leonard W. Weiss, ed., *Concentration and Price*, Cambridge: MIT Press, 1989, pp. 67-84.

[28] *Construction Proceedings*, Construction Industry Institute, 2000 Annual Conference, Nashville, Tennessee, August 9-10, 2000, Executive Summary. Also see Awad S. Hanna, et. al, *An Investigation Into the Impacts of Change Orders on Labor Efficiency in the Mechanical Construction Industry: Phase II; an Investigation Into the Impacts of Change Orders on Labor Efficiency in the Electrical Construction Industry*, University of Wisconsin-Madison, 1997.