

# **The Troubled History of Government-Mandated Project Labor Agreements on Contracts for Contra Costa County, California**

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For 20 years, Contra Costa County, California has been a hotbed of union lobbying efforts to convince local governments to require construction contractors to sign project labor agreements with unions as a condition of work. It was one of the first places in the country where unions deliberately used government-mandated project labor agreements to organize construction workers and expand the market share of unionized construction companies.

In the 1990s, Contra Costa County was the only place in California where local governments required contractors to sign project labor agreements for routine building projects, thus expanding project labor agreements beyond their traditional use on large, complex, multi-year infrastructure projects. Project labor agreements imposed by the Pinole City Council and the Board of Directors of the Contra Costa Water District were targets of litigation in the mid-1990s as supporters and opponents of government-mandated project labor agreements began testing their legal theories in the state court system. Two of the three plaintiffs in a 2001 lawsuit challenging a presidential executive order restricting project labor agreements were the Contra Costa Building and Construction Trades Council and the City of Richmond (located in Contra Costa County).

At the Contra Costa County Board of Supervisors, government-mandated project labor agreements have been chronically associated with controversy. Here's the history of project labor agreements for county construction.

## **Contra Costa County Was the First California Government to Mandate Project Labor Agreements for Taxpayer-Funded Construction**

On March 15, 1994, the Contra Costa County Board of Supervisors approved Resolution 94-156, which established criteria for contractor pre-qualification for construction of the Merrithew Memorial Hospital Replacement Project (now known as Contra Costa Regional Medical Center). Pre-qualification criteria included contractor acceptance to be bound by a Project Labor Agreement.

This appears to be the first Project Labor Agreement mandated by a local government in California.

The winning bid on this project was \$39.5 million, and the cost as of October 30, 1997 was listed at \$48.3 million. In 2002, a representative of the county's Advisory Council for Equal Employment Opportunity publicly criticized – as low – the (6.07%) minority-owned business enterprise participation and (1.34%) women-owned business participation on this project.

## **Shrinking the Bidding Pool**

In mid-March 2001, the bid deadline for construction of the Costa Contra County Family Law Center was moved without explanation from March 22 to April 19. A staff report was issued to the Contra Costa County Board of Supervisors on March 22 for an item on the March 27 meeting agenda to require contractors to sign a Project Labor Agreement. The board of supervisors approved the Project Labor Agreement on March 27. A proposed amendment to limit the scope of the Project Labor Agreement to listed criteria and therefore allow non-union contractors to pay equivalent fringe benefits to their own employee benefit programs failed on a 3-2 vote.



The county ultimately extended the bid deadline to May 17. All five prospective non-union bidders dropped out of the bidding process, and the low bid was 19 percent over the estimated cost (calculated before there was a Project Labor Agreement mandate). An article in the *East Bay Business Times* confirmed that contractors withdrew their plans to bid on the project because of the Project Labor Agreement added to the bid specifications.

During consideration of this Project Labor Agreement requirement for a single project, union officials lobbied for the Contra Costa County Board of Supervisors to adopt a policy concerning project labor agreements on future projects. The board of supervisors directed the Internal Operations Committee to develop such a policy, which it did during the fall of 2001 with the exception of setting a project cost threshold.

The effort of union officials to impose a government-mandated Project Labor Agreement on the Family Law Center and future projects coincided with their unsuccessful campaign to have the county rebid the Juvenile Hall Addition Project in order to prevent a non-union electrical contractor belonging to Associated Builders and Contractors (ABC) from being the subcontractor for electrical work. Presidential Executive Order 13202 prevented the board of supervisors from requiring contractors to sign a Project Labor Agreement for this federally-funded project. In the end, the unionized general contractor Arntz Builders was removed from this project because of poor quality construction, and the insurance company selected a non-union ABC general contractor in 2004 to finish the last \$5 million of work.

### **A Threshold of \$20-25 Million Was the Right Number...**

The agenda for the January 15, 2002 Contra Costa County Board of Supervisors meeting featured an item to “consider adopting a policy regarding the use of project labor agreements on certain County construction projects and establishing a dollar threshold at which County construction projects will be subject to such a policy.” A chart provided by staff of “Recently Completed, in Construction, and Pending Facility Construction Projects” showed six projects at \$25 million or more, eight projects at \$10 million or more, and 21 projects at \$1 million or more.

An article in the January 15 *Tri-Valley Herald* newspaper about the scheduled vote quoted county supervisor Mark DeSaulnier as saying that a threshold of \$20-25 million “is what we talked about as the right number” in the Internal Operations Committee deliberations. In the same article, the head of the Contra Costa Building and Construction Trades Council claimed that the unions normally don’t have agreements on small projects of less than \$2 million because “if required for every \$2 million project, we’d never have time for anything else.”

But when asked at the meeting what threshold the unions wanted, the same union leader called for a \$1 million threshold. The board of supervisors dutifully established a policy with a \$1 million threshold on a 4-1 vote, with Supervisor Gayle Uilkema voting no because – among other reasons – the project cost threshold was too low.

In the following months, the board of supervisors extended bid deadlines on county projects because union officials and their lawyers refused to sign project labor agreements that conformed to the criteria approved in the new policy that those same union officials had openly supported on January 15. As outlined in a May 10, 2002 letter, union officials objected to the arbitration procedure included in the policy. Statements from union officials reported in newspaper articles also revealed an objection to the “core workforce” provision that allowed non-union contractors to sign the Project Labor Agreement but still use a limited number of employees from their own permanent workforce.



As a result of what the *Contra Costa Times* editorialized as a “Defective Union Deal,” the county built two animal shelters and a childcare center without project labor agreements after the policy was approved in January 2002.

## **Unions Need Project Labor Agreements On The Small Jobs, Too**

On December 17, 2002 the Contra Costa County Board of Supervisors voted 4-1 to adopt a “revised policy on project labor agreements as recommended by the County Administrator” and approve plans and specifications for two small remodeling projects worth between \$2 million and \$3 million in Richmond and Antioch.

At this meeting, the county administrator reported to the board that county staff tried to work with the unions to get amendments to the original policy approved in January 2002, but a deal could not be reached. He also reported his intention to return to the board quickly with a modified Project Labor Agreement policy. In the meantime, the county would use a “standard PLA” provided by the Contra Costa Building and Construction Trades Council for these two projects. “It is not a revised policy,” he clarified.

This practice continued for bidding on several other projects. For example, on May 6, 2003, the board of supervisors voted to approve plans and specifications for the New Discovery House Facility, estimated at \$3.7 million. In the packet provided to the board of supervisors, the only reference to a Project Labor Agreement was in the “Notice to Contractors.” In the bid specifications, there was the “standard PLA” referred to at the December 17, 2002 meeting as provided by the Contra Costa Building and Construction Trades Council.

A controversy erupted in June 2003 when the county awarded a project at a contract price over \$1 million but without a Project Labor Agreement requirement. The county had not included a Project Labor Agreement requirement in the bid specifications because the engineer’s estimate was under \$1 million. When the county revised its policy in August 2003 (see below), the basis for the cost threshold was changed from the estimated cost to the actual cost.

## **Problems Persist Despite a New Project Labor Agreement Policy**

On August 12, 2003, the board of supervisors voted 4-1 to approve a new Project Labor Agreement for county projects that incorporated criteria acceptable to union officials. The staff report for the policy indicated that the policy was appropriate for “large, complex county construction projects” and would help the county to avoid “labor disruptions that can occur on long-term projects.” This declared that the policy was meant to conform to the intent of project labor agreements as authorized in the context of the National Labor Relations Act.

An ABC representative pointed out that the county was imposing the policy on projects that certainly were not large, complex, and long-term. ABC publicly called for the threshold to be raised from \$1 million to \$20 million, but only Supervisor Gayle Uilkema expressed support for the higher threshold. She again voted against the policy.

Union contractors continued to struggle in their work performance for the county, with ABC non-union contractors picking up the pieces. In 2004, the union general contractor working on one of the animal shelters went bankrupt, and the county assigned a local non-union ABC general contractor to finish the project.



## **The County Defends the Union Policy with Flawed Internal Reports**

In an attempt to improve the damaged reputation of the Project Labor Agreement policy, the county released a report on August 16, 2004 entitled "Update on County's Experience with the Project Labor Agreement" claiming that the policy did not cut competition or raise costs. However, ABC pointed out that the county did not include a control group in the analysis, failed to include subcontractors in the analysis, and reported that union general contractors won the contracts for all eight projects, which had an average cost of about \$2.9 million.

ABC subsequently obtained the source data used by county staff to compile the report and discovered that staff had misidentified some of the bidders as non-union when they were actually union. What the report actually showed was that union contractors were now overwhelmingly dominating the bidding and monopolizing the work on county projects over \$1 million.

Annual reports on the Project Labor Agreement policy were issued in 2005, 2006, and 2007 using the same flawed methodology. In an October 8, 2007 memo to the Internal Operations Committee, county staff recommended ending the reviews because project labor agreements had become a routine and established part of how the county managed its construction projects.

## **Additional Incidents Show Weaknesses in the County's Policy**

On May 11, 2010, the Contra Costa County Board of Supervisors declined to award a \$1.9 million slurry seal project to a qualified, experienced low bidding contractor that refused to sign a Project Labor Agreement. The contractor's employees had distributed flyers to residents of Discovery Bay that urged residents to contact the board of supervisors to insist that the bid be awarded, at a price that was \$400,000 less than the second lowest bid. The county rebid the project with a lower quality standard to keep the cost down.

From 2009 through 2012, the Contra Costa County Board of Supervisors waived the Project Labor Agreement for a series of road improvement projects because the county did not get permission from Caltrans and/or the Federal Highway Administration to require it. These projects include the Iron Horse Trail Pedestrian Overcrossing (Robert Schroeder Bridge) and Bethel Island Bridge Replacement Project (2009), the Vasco Road Safety Improvements Project (2010), the Montalvin Manor Pedestrian and Transit Access Improvements Project and the Countywide Microsurfacing Project (2011), and the Kirker Pass Road Overlay Project (2012).

In 2012, the California Construction Compliance Group (CCCG) examined available public documents and certified payroll records to determine the degree of contractor compliance with state labor laws on the New West County Health Center Project. Preliminary findings indicate that "in general, contractors on this project did a poor job properly supervising and utilizing apprentices," thus giving certain contractors an unfair competitive advantage on pricing. In addition, the review found possible underpayments of state-mandated construction wage rates (prevailing wages) by several contractors totaling more than \$35,000. Also, unions failed to dispatch West County resident workers at rates targeted under the Project Labor Agreement to ensure local hiring.

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# Appendix A: Preliminary Findings from an Audit of Contractor Labor Law Compliance on a Contra Costa County Project

*Note: these are preliminary findings prepared by a professional contractor based on data provided by Contra Costa County. The California Construction Compliance Group will provide these findings and data to the California Department of Industrial Relations for government investigation and enforcement, as appropriate.*

The California Construction Compliance Group conducted a review and analysis of the certified payroll records and other supporting documentation regarding New West County Health Center project, located at 13601 San Pablo Avenue, San Pablo, Contra Costa County, California. This project was a public works project of Contra Costa County, with an original bid date of December 7, 2010. The results of this audit rely heavily on certified payroll records and other documents provided to us.

## **Summary of Findings**

Based on the certified payroll records related to the New West County Health Center project, as produced by the Contra Costa County Department of Public Works, the following was found:

### ***Apprentice Supervision and Utilization***

The public policy goal behind laws requiring the use of apprentices is the assurance of a steady supply of new skilled trade workers to meet future demand. This need should be balanced by rigorous enforcement of the law so that contractors do not over-utilize apprentices, who are paid far lower wages than full journeymen trade workers. A dramatic reduction in payroll can give a competitive advantage over ones competitors. In extreme cases, apprentices may be totally unsupervised

The certified payroll records indicate that in general, contractors on this project did a poor job properly supervising and utilizing apprentices. Of the thirty-five (35) contractors known to have performed work in this project, thirteen (13) (37% of contractors on this project) failed to adequately supervise apprentices by maintaining a minimum 1:1 journeyman to apprentice ratio on at least one (1) work day. In total, contractors on this project were in violation of the required 1:1 ratio on at least 137 days, including 57 days when an apprentice was totally unsupervised (working on the jobsite without the supervision of a journeyman of the same trade.)

Further, twenty-eight (28) of the thirty-five (35) contractors (80% of the contractors on this project) failed to provide evidence that they submitted DAS-140 forms related to this project to the proper apprenticeship training organizations. Failure to timely submit DAS-140 forms for a public works project carries a fifty dollar (\$50) per day penalty for non-compliance. Thirty-one (31) of the contractors on this project (89%) failed to provide evidence that they submitted DAS-142 forms related to this project.



California State law requires that contractors utilize apprentices to perform a minimum of twenty percent (20%) of all work hours performed in a trade by that contractor. Seventy-three point six percent (73.6%) of all trades performing work on this project failed to utilize apprentices to perform an acceptable proportion of the total hours worked by that trade and contractor.

### ***Prevailing Wage Violations***

Based on the certified payroll records produced to date, at least twelve (12) of the thirty-five (35) contractors (34.3%) known to have performed work on this project failed to pay the prevailing wage rate to a worker or workers on at least one day. A total of \$11,469.04 in wage underpayments and \$23,669.94 in fringe benefits underpayments were identified, for a total of \$35,138.98 in identified underpayments.

### ***Minority and Female Workers***

The Technical Assistance Guide for Federal Construction Contractors sets the minority participation rate goal for Contra Costa County at twenty-five point six percent (25.6%) of the total hours worked, and the national female participation rate goal is set at six point nine percent (6.9%).

Based on the certified payroll records produced to date, only three (3) females were employed on the project. These three female workers represent only zero point six percent (0.6%) of the total workforce and performed only zero point two three (0.23%) of the total hours worked on the project.

Approximately forty point nine percent (40.9%) of the total hours worked on the project were performed by minority workers, however when hours worked by Hispanic workers are removed, only three point eight percent (3.8%) of the total hours worked on the project were performed by non-Hispanic minority workers.

### ***Local Area Labor Priority Utilization***

The Project Labor Agreement pertaining to this project specifies that priority is to be given to workers based on residency pursuant to a tier system. Workers from West Contra Costa County communities, with a particular emphasis of the residents of the City of San Pablo, are to be given the highest priority (Tier 1), workers who reside in other areas of Contra Costa County follow in priority (Tier 2), and workers who reside in other Bay Area Counties (Alameda, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma) have the third level of priority. Workers who resided anywhere else were to be given to lowest level of priority for the purposes of this project (Tier 4).

Based on the certified payroll records produced to date, only nine percent (9%) of the total hours worked on the project were by workers from West Contra Costa County communities (Tier 1). Only eleven (11) workers, or two point two percent (2.2%) of the workforce on the project, were residents of the City of San Pablo. These workers performed only five point one percent (5.1%) of the total hours worked on the project.



Residents of other areas of Contra Costa County (Tier 2) performed twenty-eight percent (28%) of the total hours worked on the project. Residents of other Bay Area Counties (Tier 3) performed forty point three percent (40.3%) of the total hours worked on the project. Residents of areas not given any level of priority (Tier 4) performed twenty-one point eight percent (21.8%) of the total hours worked on the project.

Of the contractors performing work on the project four (4) were located in Tier 1, five (5) were located in Tier 2, twenty-three (23) were located in Tier 3, and three (3) were located in Tier 4.

### ***Missing Documentation***

The issues identified above and set forth in greater detail in the full report may not include all such issues related to this project, as numerous documents related to this project and requested from the Contra Costa County Department of Public Works were not produced. Certified payroll records for at least ten (10) of the thirty-five (35) contractors known to have performed work on this project were missing or incomplete for at least one (1) week. Certified payroll records for one contractor, Scaffold Solutions, were not produced at all. Sixteen (16) of the contractors known to have performed work on the project did not provide Fringe Benefits Statements with their certified payroll records, and as such it could not be determined whether those contractors paid fringe benefits at the rate required by the applicable prevailing wage.

Further, to date no information regarding the original or final contract values have been produced. No information on the implementation of the "Helmets to Hard Hats" program or utilization of veterans in the workforce for this project has been produced.

California Construction Compliance Group (CCCG) is a California non-profit organization that promotes free, open and vigorous competition in the building and construction industry through monitoring, enforcing and evaluating changes to prevailing wage and apprenticeship laws in an effort to promote equal opportunity among prevailing wage contractors. CCCG supports transparency in public works project bidding and compliance.

CCCG's mission is to ensure quality construction, worker protection and accountability for taxpayer money through labor law compliance audits, funding industry-related research, and funding labor law issue litigation.

In addition to identifying and reporting labor law violations, CCCG is a resource to public works and local government leaders, adding to the overall body of knowledge regarding best practices and delivery of the best value to taxpayers.

