Sixteen Flaws in the October 2012 Working Partnerships USA Argument for Project Labor Agreements on Community College District Construction in Santa Clara County

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Executive Summary

To attempt to formulate an economic and intellectual argument for controversial project labor agreements, a union-oriented policy organization based in San José released a report dated October 8, 2012 called Effect of Project Labor Agreements on Local Business Utilization in Santa Clara County, California.

How credible is the Working Partnerships USA report? This paper is a critical examination of the report. While the researchers apparently collected a great deal of data and the authors addressed some interesting questions, the report in its current form includes logical errors, false assumptions, and broad generalizations. This paper identifies at least 16 fundamental flaws in the report:

1. The Group That Produced the Report Has an Overt Ideological Bias
2. The Group That Funded This Report Uses the Report to Help Advance Its Own Political Interests
3. The Report Inexplicably Excludes Construction Contracts Awarded by the Fourth Community College District Based in Santa Clara County
5. The Report Does Not Accurately State What It Is Measuring
7. The Report Compares Two Data Sets That Are Rather Narrow
8. The Report Does Not Account for Variations in Sizes and Types of Contracts
10. Key Terms in the Report Are Inconsistent and Poorly Defined
11. The Report Defines Local in an Absurd Way
12. The Report Shows Favoritism for Certain Geographic Regions
13. The Report Includes Distorted Estimates of Commute Distances
14. The Report Fails to Recognize that Northern California Is a Regional Construction Market
15. The Report Is Fattened with Non-Relevant and Unproven Statements
16. The Report Makes Uncritical Assumptions About the Inherent Superiority of Contracts Awarded to Local Businesses

Debates over project labor agreements at California local governments tend to prioritize politics over logic. The Working Partnerships USA report – as currently written – attempts to justify a preconceived ideological concept with a logical, intellectual economic argument. In this exercise, it fails.
1. The Group That Produced the Report Has an Overt Ideological Bias

A group called Working Partnerships USA has published in electronic format an eight-page report, dated October 8, 2012, entitled *Effect of Project Labor Agreements on Local Business Utilization in Santa Clara County, California*. It describes this report as an “Economic Policy Brief.” The organization does not provide the report on its web site (www.wpusa.org) as of December 5, 2012. The report does not list the authors or their background and qualifications. There is no evidence as of December 5, 2012 that any outside parties reviewed the research or findings of this report.

Working Partnerships USA has been described as a “think and do” institute, because it both conducts research and pursues strategies for the implementation of specific public policies (oriented toward union objectives). As indicated on the Working Partnerships USA web site, this organization is directed by a board consisting largely of current and former labor union officials. The current executive director was formerly an executive with the South Bay AFL-CIO Labor Council and was also a local politician. The founder of the organization was also an executive with the South Bay AFL-CIO Labor Council.

Of course, just because an organization has an explicit ideology and wants to see its theoretical work implemented in the political arena doesn’t necessarily mean that its research and conclusions are invalid. However, special scrutiny of its reports is obviously appropriate.

2. The Group That Funded This Report Uses the Report to Help Advance Its Own Political Interests

As it acknowledges on page 1, the report was prepared with funding from the Santa Clara & San Benito Counties Building and Construction Trades Council. This umbrella group for construction trade unions is the primary advocate for project labor agreements in Santa Clara County.

It successfully lobbied the elected boards of the San José-Evergreen Community College District and the Foothill-DeAnza Community College District to require their contractors to sign a project labor agreement with unions as a condition of working on all construction contracts funded by proceeds from bond sales. Both districts have voted to extend their original project labor agreements to additional projects.

The Santa Clara & San Benito Counties Building and Construction Trades Council has now distributed the Working Partnerships USA report to elected officials and staff of the West Valley-Mission Community College District as an authoritative argument for this particular college district to require its contractors to sign a project labor agreement with unions.

Of course, just because an organization funds a report that argues in support of its positions doesn’t necessarily mean that the conclusions of the report are invalid. However, special scrutiny of that report is appropriate.
3. **The Report Inexplicably Excludes Construction Contracts Awarded by the Fourth Community College District Based in Santa Clara County**

In a glaring oversight, the report omits contracts awarded from 2007 to 2012 by the Gavilan Community College District, which includes Gilroy and Morgan Hill and falls completely within the geographical jurisdiction of the Santa Clara & San Benito Counties Building and Construction Trades Council. In March 2004, voters in this college district approved Measure E, which authorized the sale of $108 million in bonds to fund construction projects. The district has not required companies to sign a project labor agreement with unions as a condition of winning contracts funded by the bond measure.

Why didn't researchers include the Gavilan Community College District in order to expand the small set of projects at West Valley-Mission Community College District that was meant to represent contracts awarded to companies without a project labor agreement? Presented without sufficient justification, the report's exclusion of bidders at the Gavilan Community College District encourages speculation that including this college in the data set would compromise the preconceived conclusion of the researchers.


Any independent entity trying to determine if this report reached a valid conclusion will need to collect and recreate the data from scratch, because Working Partnerships USA does not include in its report any compilation of the data it used as the basis for its conclusions.

This report cannot be trusted as long as the following pivotal information is not available for public scrutiny:

1. A simple list of the 930 contractors identified by Working Partnerships USA and the alleged “business locations” of these companies. This list would include the 753 construction contractors and subcontractors at the San José-Evergreen Community College District and the Foothill-DeAnza Community College District and the 177 construction contractors and subcontractors at the West Valley-Mission Community College District.

2. A simple list of the 57 projects identified at the San José-Evergreen Community College District and the 37 projects identified at the Foothill-DeAnza Community College District (for a total of 94 projects in this set), and the 30 projects at the West Valley-Mission Community College District.

3. Applicable provisions from the project labor agreements to confirm that the project labor agreements were “utilized” for all bond-funded construction work – or even better, acknowledgement that researchers confirmed that bid specifications for each of the 94 projects included a requirement to sign a project labor agreement.
It seems reasonable to expect Working Partnerships USA to include this information in order to give the report credibility and allow others to duplicate the results. Indeed, it would not be unreasonable for the authors of the report to provide an electronic link to the original public records used to compile these lists.

Without the lists of contractors and projects, independent entities can’t answer these questions:

1. Did the report include every project at the San José- Evergreen Community College District and at the Foothill-DeAnza Community College District covered under a project labor agreement? On what basis did researchers choose a vague time period from “2007-2008 to spring 2012" to evaluate projects? Did these two colleges award contracts for bond-funded projects outside of that time period?

2. How did the report account for installation projects that would be classified as “the furnishing and equipping of school facilities?” For example, Sections 1.4 and 2.2 of the project labor agreement for the Foothill-DeAnza Community College District indicate that covered projects are listed in Appendix B. Slapped into Appendix B is the text of the bond measure, which includes such items as printers (budgeted at $52,973).

3. Did the report misclassify any projects at the San José-Evergreen Community College District and at the Foothill-DeAnza Community College District as covered by project labor agreements, when such a requirement was not actually included in the bid specifications?

For example, does the list of projects mistakenly include any maintenance projects not covered by a project labor agreement because bond sales did not provide funding for those projects? For example, Section 2.4.1 of the project labor agreement for the San José-Evergreen Community College District states that “The Agreement is not intended to, and shall not affect or govern the award of public works contracts by the District, which are outside the scope of the Project as defined herein. The foregoing exclusion shall include without limitation contracts awarded by the District: (a) for maintenance (as that term is used and defined in Public Contract Code §20655); (b) as a result of emergencies pursuant to Public Contract Code §20654.” Also, Section 2.6.3 of the project labor agreement for the Foothill-DeAnza Community College District exempts contracts related to the purchase and lease of specialized equipment and work performed by manufacturers’ representatives and office equipment vendors.

1. Did the report include every project bid at the West Valley-Mission Community College District? On what basis did researchers choose a time period “from August 2009 through August 2012" to evaluate projects? Did this college award contracts for bond-funded projects outside of that time period?

2. Did the report include every contractor and subcontractor for projects at these three college districts? Did researchers look for and account for any substitutions in subcontractors?
3. Did the report accurately identify the relevant business address for every contractor and subcontractor for these projects? Did the report take into account the South Bay regional offices of larger construction companies that perform work throughout the San Francisco Bay Area and Northern California?

5. The Report Does Not Accurately State What It Is Measuring

The introduction indicates the report is meant to determine if a project labor agreement “is associated with an increase in contracts awarded to local businesses.” Actually, the report cannot achieve its ambition of determining if there was an increase in contracts awarded to local businesses, because it did not evaluate contracts awarded by the San José- Evergreen Community College District and the Foothill-DeAnza Community College District before elected boards of these districts required contractors to sign a project labor agreement. Demonstrating an increase would require the report to compare contract awards before the boards mandated a project labor agreement with contract awards after the boards mandated a project labor agreement.

In reality, the report simply compares two sets of businesses that won contracts for construction at community college districts in Santa Clara County during a partially-overlapping time period of about six years, with the purpose of determining if one set has a higher percentage of “local contractors” than the other set. Researchers assume the only statistically significant independent variable between the two sets would be the bidding requirement for a business to sign a project labor agreement with unions as a condition of winning the contract. The report even claims (on page 4) that comparing the two sets are comparing “apple-to-apples.” This is not accurate.


The report is not only deficient concerning its data. It is deficient concerning its technique.

In reaching their conclusions, the researchers do not fulfill reasonable expectations for a report related to quantitative economics. It neglects to control for other factors that might affect the percentage of local contractors that win contracts on community college projects. The researchers fail to run statistical tests to see if their findings are significant. Some of the more specific weaknesses of the economic analysis are outlined below.

7. The Report Compares Two Data Sets That Are Rather Narrow

This report only considers businesses that win construction contracts for three community college districts based in Santa Clara County. One set in this report is comprised of contracts awarded by two colleges that required contractors to sign a project labor agreement in order to work on certain projects. The other set consists of contracts awarded by one college that did not require contractors to sign a project labor agreement.
These small sets do not inspire much confidence in the results. One could theorize numerous reasons why two colleges might cumulatively have a higher percentage of local contractors than a third. Perhaps the third college simply advertises its pending contracts more widely than the other two districts in order to get more bidders. Perhaps the third college has an outstanding reputation as a high-quality client and thus attracts more bidders within a larger region. Perhaps certain contractors have an exceptional feel for profitably managing construction projects within one of the districts. (The report indicates that some contractors worked on more than one project, suggesting that certain businesses have extensive experience working for one of the colleges.)

8. **The Report Does Not Account for Variations in Sizes and Types of Contracts**

The collected data and the conclusions drawn from that data are quite crude. Most significantly, researchers did not consider differences in the size and types of contracts.

Consider this scenario: if a general contractor based in San José subcontracts a small portion of a project to a carpet installation contractor based in San Mateo, this report would apparently consider this project to be 50% non-local, because there is one Santa Clara County contractor and one San Mateo County contractor. Researchers should have evaluated their data with consideration to the amount of the contract, including an assessment of actual construction labor costs and the amount of subcontracted work.

The report also fails to take into account specialty contracts. For example, the tennis court work at Foothill-DeAnza Community College District included in Appendix B of the project labor agreement and budgeted at $274,247 is a small, specialized contract that is very different from a $45 million contract to build a new main building. It would be reasonable to assume that specialty contracts may attract businesses that perform work in large geographical regions, including multi-state regions.

9. **Time Periods Used for the Report Are Vague, Arbitrary, and Inconsistent**

The report claims it compares two sets of contracts awarded “between 2007 and 2012.” It looks at 94 projects awarded in a fuzzy time period “between 2007-08 and spring 2012” for the two college districts requiring construction companies to sign a project labor agreement with unions: 57 projects at the San José-Evergreen Community College District and 37 projects at the Foothill-DeAnza Community College District. It looks at 30 projects awarded in a more specific time period “from August 2009 through August 2012” at the West Valley-Mission Community College District, which did not require contractors to sign a project labor agreement with unions.

The report does not indicate why these time periods were selected and why the two sets of contracts do not encompass the same time period. Contrary to the report’s claim that it is comparing projects within “a similar timeframe,” the Northern California construction market changed dramatically during the three time periods at issue: (1) the 2007 to July 2009 period
only included in the first set; (2) the August 2009 to spring 2012 period included in both sets; and (3) the spring 2012 to August 2012 only included in the second set.

Unlike the set of contracts awarded without the project labor agreement, the set of contracts awarded with the project labor agreement requirement include a time period of at least a year before the October 2008 economic crash. While the Northern California construction market was in decline during this time period, it was still relatively prosperous and certainly different than the time period from spring 2012 to August 2012 that is only included in the second set of contracts awarded without the project labor agreement. During the period from 2007 to 2012, many Bay Area construction companies were compelled to expand their market region and bid on more contracts. These companies adopted themselves to a changing construction market defined by fewer bidding opportunities and more intense bidding competition.

10. Key Terms in the Report Are Inconsistent and Poorly Defined

Throughout the report, there is a confusing and disturbing lack of consistency in terminology:

Projects versus Contracts: For example, the third paragraph of the Introduction states that the report is dealing with agreements that are “project-specific,” and the last paragraph of the Introduction refers to a set of “capital improvement projects” and then again refers to “projects.” But it concludes with a reference to “contracts.” The report uses the terms “projects” and “contracts” interchangeably.

As shown in the ongoing union-initiated court case Sheet Metal Workers International Association Local Union No. 104 v. California Department of Industrial Relations (Russ Will Mechanical, Real Party in Interest), the distinction between a project and a contract is significant. Without seeing the actual data, an outside examination cannot determine if the sets were evaluated on a project basis or a contract basis.

Construction Contractors versus Businesses: Did the researchers limit the report’s data sets to construction companies whose employees performed construction trade work on-site, or did it include professional services (surveying, inspection, materials testing, etc.) and material suppliers and other “businesses?” For example, Section 2.6.10 of the project labor agreement for the Foothill-DeAnza Community College District incorporates inspectors and materials testers when such work is included in the applicable Master Labor Agreements negotiated by unions that signed the project labor agreement.

11. The Report Defines Local in an Absurd Way

The “Key Findings” on page 2 state that a “local” business means “in-county.” This meaning is arbitrary and deceptive.

This report assumes that a business based in Fremont that performs contract construction work one mile away at a satellite
campus of the San José-Evergreen Community College District in Milpitas is not local, even though the two cities border each other. Making this definition even more absurd, the report also assumes that a business based in Saratoga that performs contract construction work in Milpitas is local, even though it is 18 miles away.

Presented without sufficient justification, the report’s definition of local encourages speculation that it is based on the geographical jurisdiction of the funding agent for the report – the Santa Clara & San Benito Counties Building and Construction Trades Council.

12. The Report Shows Favoritism for Certain Geographic Regions

Page 4 of the report establishes a second degree of contractor based in “the Bay Area” – four “core Bay Area counties within commuting distance” (Alameda, Contra Costa, San Mateo, and San Francisco). These contractors are not as desirable as businesses based in Santa Clara County, but more desirable than the third degree of “out-of-town” businesses based in all of the other California counties and the fourth, least desirable degree of “out-of-state” businesses.

Why would a company based in San Francisco or Richmond considered to be more local than a contractor from neighboring Merced County, neighboring Santa Cruz County, or from Monterey County? A chart on page 8 of the report indicates that Santa Cruz County and Merced County are ranked #2 and #3 respectively on a list of counties of residence for construction workers in Santa Clara County. Yet the report classifies businesses in these counties as “out-of-town,” as if they were located in Imperial County or Siskiyou County. The “Results” chart even goes so far as to lump businesses headquartered in adjacent Central Valley and Central Coast counties with out-of-state businesses.

Remember the late 1990s to the mid-2000s, when working class young people who worked in the South Bay and wanted to buy a home for their families moved to Los Banos? Now it’s suggested that project labor agreements should be “utilized” to keep them out.

Presented without sufficient justification, the report’s classification of businesses located in San Francisco and Walnut Creek as more desirable than businesses located in Los Banos, Watsonville, and Salinas encourages speculation that it simply reflects geographical jurisdictions of trade union locals and regional districts.

13. The Report Includes Distorted Estimates of Commute Distances

In a whopping understatement, the report acknowledges in passing that “there is not a 100% correlation between employer location and employees’ place of residence.” In fact, there may not be a 10% correlation between employer location and employees’ place of residence for San Francisco Bay Area construction companies that bid on major public works projects.
Yet the report tries vainly to somehow correlate project labor agreements with reduced emissions of greenhouse gases. In doing so, it uses the geographic categories criticized above. Presented without sufficient justification, the report’s definition of commuting distance encourages speculation that it simply reflects geographical jurisdictions of trade union locals and regional districts.

Once the initial false premise is established concerning the borders of the “regional labor shed” (as it is described on page 4), the report goes even more radically off-track by presenting standard round-trip commute distances from other counties to Santa Clara County. It cites a round-trip commuting distance for a construction worker from Alameda County to Santa Clara County of 72 miles, although in actuality the commute could be one mile from Fremont to Milpitas or 120 miles from Albany to Saratoga. The report makes huge conclusions from arbitrary definitions and broad assumptions.

14. The Report Fails to Recognize that Northern California Is a Regional Construction Market

The report dedicates its entire third page to maps apparently meant to prove that outsiders are taking work from Santa Clara County businesses because the elected board of the West Valley-Mission Community College District does not require contractors to sign a project labor agreement. What the maps actually reveal is that many contractors performing public works construction in Santa Clara County have a market region that encompasses the San Francisco Bay Area and the Sacramento area – a market region usually understood as “Northern California.”

This map explains why both union and non-union national construction trade associations operate individual chapters that cover Northern California: for example, the National Electrical Contractors Association of Northern California (unionized), the Northern California Mechanical Contractors Association (unionized), and the Northern California Chapter of Associated Builders and Contractors (non-union). For workers, there is the Northern California Carpenters Regional Council (a union) and the Northern California District Council of Laborers (a union). Numerous collective bargaining agreements apply to Northern California, and the Northern California geographical jurisdiction is reflected in state-mandated construction wage rates (“prevailing wages”).

To prove the existence of this regional construction market, the authors may want to conduct a counter-report to determine if the local contractors that work at the San José-Evergreen Community College District and the Foothill-DeAnza Community College District also work in other counties in Northern California, including counties not in the “core Bay Area counties within commuting distance.”

Construction trade unions themselves acknowledge the existence of such regional markets and therefore undermine their own claims concerning local hiring. In its September 30, 2009 opening brief to the California Supreme Court in *State Building and Construction Trades Council of California, AFL-CIO v. City of Vista*, the State Building and Construction Trades Council of California asserted that “construction workers today routinely commute to projects outside the cities in which they happen to
live” and “it is not uncommon for today’s construction workers to commute more than 100 miles to work at a job site.” This happens because construction trade unions have geographical jurisdictions that often encompass large regions and because they use a “traveler” classification so out-of-area union workers have access to jobs.

Putting this statement in perspective, the report’s emphasis on local contractors as a benefit of project labor agreements might encourage speculation that the union argument is a cynical ploy to justify a project labor agreement. It certainly does not conform to reality.

15. The Report Is Fattened with Non-Relevant and Unproven Statements

The researchers who prepared this report stretched inadequate research into an eight-page paper.

Of the four classifications of “Key Findings” on page 2, only the first finding (“Local Business Impacts”) relates to the data collected by Working Partnerships USA. Data does not relate to the residences of workers, the costs of construction, or traffic and greenhouse gas emissions.

Emphasis is placed on “local hiring hall provisions embedded in PLAs.” These provisions are not explained in the report. The report does not indicate the full geographical jurisdiction of each trade union that covers Santa Clara County. It does not explain travel and subsistence policies for each trade union. It does not indicate the extent to which each trade union dispatches “travelers.” It does not describe each trade union’s standards for dispatching priority from the hiring hall.

The report’s claims about construction costs do not address the first and only comprehensive study (published in 2011) that compares California school construction costs for projects covered by a project labor agreement against California school construction costs for projects not covered by a project labor agreement. (See www.thecostofPLAs.com.) This study, which received significant media attention and fierce union attacks, is a legitimate economic study that uses statistical models and fulfills rigorous academic criteria. The failure of the Working Partnerships USA report to address this study might encourage speculation that it was ignored because the conclusions conflict with the ideological bias of the authors and funders.

Finally, the report suggests that project labor agreements can reduce traffic and greenhouse gas emissions. No data is available to reach this conclusion, nor does the report attempt to analyze the various findings in documents prepared by the three community college districts to comply with the California Environmental Quality Act (CEQA).
16. The Report Makes Uncritical Assumptions About the Inherent Superiority of Contracts Awarded to Local Businesses

This report presumes that a local government serves its constituents best when it pursues a goal of awarding contracts to an idealized percentage of local businesses. While it is always pleasing for a community to see a local company win a local contract, this particular desire cannot be considered in isolation. Other factors important to taxpayers and constituents in general include price, quality, and value. It does not serve a student well if a local company wins a contract for a college building at a price so high that the college can’t award contracts for other projects.

Awarding of contracts to local businesses can be a worthy goal, but the report does not inquire if this goal is actually the top priority or should be the top priority for the community at large. That goal is a priority to a specific constituency: the Santa Clara & San Benito Counties Building and Construction Trades Council, which funded this report and is now distributing it.

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.