

**THE DISCRIMINATORY IMPACT OF UNION FRINGE BENEFIT
REQUIREMENTS ON NON-UNION WORKERS UNDER GOVERNMENT-
MANDATED PROJECT LABOR AGREEMENTS.**

by:

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INTRODUCTION/SUMMARY

On February 6, 2009, President Obama signed an Executive Order encouraging executive agencies of the federal government to require every contractor or subcontractor on a large-scale construction project to negotiate or become a party to a project labor agreement (PLA) with one or more labor organizations. A PLA is a pre-hire collective bargaining agreement between contractors and one or more unions that establishes the terms and conditions of employment for a specific construction project. Under a union-only PLA, all subcontractors are required to sign onto the labor agreement as a condition of performing work on the project. Because such PLAs typically require employers to contribute to union fringe benefit trust funds, including multi-employer union pension funds in particular, the question has arisen whether a government-mandated PLA discriminates against and otherwise harms non-union workers and contractors by imposing fringe benefit costs upon them from which they derive little or no actual benefit, i.e., a form of government-mandated taking without just compensation.

This study addresses the economic impact of the fringe benefit components of union-only PLAs and concludes that government-mandated PLAs disproportionately harm non-union workers and contractors. As further explained below, such PLAs hurt workers by reducing their take-home pay on “prevailing wage” government construction projects and by forcing them to give up such wages in favor of union benefit funds from which they receive little or no benefits. Non-union contractors likewise face increased and/or duplicative benefit costs under government-mandated PLAs. The problem is particularly acute with regard to multi-employer union pension plans in the construction industry, many of which are severely underfunded. Contractors who are forced to participate in such plans may be subjected to significant withdrawal liability at the conclusion of the PLA project. This discriminatory impact explains why many non-union

construction companies are discouraged from participating in the bidding process because of the economic disadvantages imposed by government-mandated, union-only PLAs.

The study finds that employees of non-union contractors who are forced to perform under government-mandated PLAs on prevailing wage construction projects suffer a reduction in their take home pay that is conservatively estimated at 20%. If PLAs are imposed on a significant percentage of federal construction work, hundreds of millions of dollars of income will be taken from non-union workers and distributed to union pension funds, from which the non-union workers will receive no benefits. The study also finds that non-union contractors will be forced to pay extra costs to work under PLAs on federal construction projects, in excess of 25%. Evidence is shown below that additional costs to employers from the imposition of PLAs on large federal construction projects are likely to range from \$153 to \$767 million per year. In total, the move to PLAs could cost non-union workers and their employers from over \$275 million to over \$1.38 billion annually. Non-union contractors will also face increased and unnecessary exposure to pension fund liability if they perform work under PLAs, including possible withdrawal liability when the PLA project is completed.

METHODOLOGY

The first objective of this study is to analyze and determine the costs that PLAs will impose on both non-union construction workers and their employers. The second part of this study presents an explanation and discussion of the withdrawal liability that companies are likely to face if they decide to terminate their affiliation with a multi-employer (union) pension plan.

As the first step in analyzing PLA costs to employees, the free searchable database at usaspending.gov was reviewed to determine the number of federal construction projects over \$25 million that have been awarded in recent years.² Clearly the amount of federal construction

contracts is much greater than one category in this particular website. The executive order also applies to a project when multiple contracts aggregate together and exceed \$25 million. These contracts are left out of the computations. As a result, the numbers used in this study are very conservative.³

The second step of the analysis will be a determination of the portion of each contract that may be reasonably attributed to labor costs. A number of studies have established an acceptable range for the percentage of construction contracts that constitute labor costs. As will be seen, recent studies have established this range as between 20 and 30 percent.

The third step in this study's methodology will be to conduct a detailed examination of the effect PLAs are likely to have on non-union workers take home pay. This analysis, which is both empirical and based upon the specific experiences of construction contractors who have filed comments in the ongoing rulemaking proceeding with regard to Executive Order 13502, demonstrates that PLAs have the effect of reducing non-union workers' take home wages by at least 20 percent. Even though some non-union contractors report a reduction of more than 20 percent in some cases, the 20 percent number will be used for this study in an effort to avoid exaggerating the effect of transferring these contracts to PLAs.

The fourth step in the analysis will be to determine the average fringe benefit costs that non-union employers must pay to union funds. This will be done through an examination of a sample of the following six unions: bricklayers, carpenters, electricians, painters, plumbers, and roofers. Ultimately, a nationwide average is computed and used as the percentage of fringe benefit costs that must be paid by non-union employers to union benefit funds under PLAs. This

² USAspending.gov is a relaunch of www.fedspending.org that provides citizens with easy access to Government contract, grant and other award data.

³ The Proposed Rule implementing Executive Order 13502, published at 74 Fed. Reg. 33953 (July 14, 2009), states that the Far Councils project 300 construction projects annually that will exceed \$25 million. The Councils estimate that 10% of such projects will be built under PLAs, though no factual basis is provided for this estimate.

average will then be used to compute the windfall that flows to union funds from non-union employers when they move to PLA arrangements.

As noted above, in the Proposed Rule recently issued by the Federal Acquisition Regulation Council (FAR Council)⁴, the Administration anticipates that only 10 percent of all federal construction projects with costs exceeding \$25 million will be subject to PLAs. No explanation is given for how this figure was arrived at, but the FAR Council uses it to estimate that there will be 30 construction projects where PLAs will be imposed. The total cost of the projects remains undefined, as these are future projects, but the total value amount is likely to be in the billions of dollars.⁵

Bureau of Labor Statistics data indicates that unions currently perform around 15 percent of all construction work.⁶ There is no indication of a different percentage for federal construction projects. Therefore, a projection is made of the impact of 85 percent of the work force on such projects being forced to suffer a 20 percent reduction in take home pay under PLAs, under the added assumption that only 10 percent of the covered federal projects will actually have a PLA imposed upon them by federal agencies. Because the 10 percent estimate is unexplained and potentially underestimated by the Proposed Rule, alternative estimates are provided for the effect of non-union contractors moving to PLA arrangements 25 and/or 50 percent of all covered federal construction projects in a year. As will be seen, because of the discriminatory economic impact of PLAs, many non-union contractors cannot successfully bid on projects covered by such agreements, reducing the fringe benefit costs to those contractors but also denying employment to non-union workers.

ANALYSIS

⁴ Federal Acquisition Regulation; FAR Case 2009–005, Use of Project Labor Agreements for Federal Construction Projects, Federal Register/Vol. 74, No. 133/Tuesday, July 14, 2009/Proposed Rules.

⁵ The total cost of the 30 largest federal construction contracts awarded in 2008 exceeded \$18 billion.

⁶ bls.gov/iag/tgs/iag23.hgm#workforce.

Using the methodology described above, and beginning with the data contained in USAspending.gov, the following conclusions can be reached:

The category of contracts listed in the data base with the highest probability of affecting the construction industry is Construction of Structures and Facilities. Accordingly, these contracts were the ones used to compute the value of federal contracts that would be transferred from non-union to union shops. The most recent year with a full twelve-month period of data available is 2008. Accordingly, 2008 is used to examine federal contract dollars awarded. There are 253 contracts in this category that meet the criteria of being greater than \$25 million. The total amount of these 253 contracts is \$28,876,358,458. As noted above, the Proposee Rule estimates a higher number of large federal construction projects (300) in the year following implementation of the final rule under Executive Order 13502.

As further noted above, in trying to measure the discriminatory economic impact of these contracts being awarded under union-only PLAs, it is important to estimate how much of each contract is determined to be labor costs. A number of studies have determined that the appropriate labor percentage on a construction contract is between 20 and 30 percent (Vedder, 2009).⁷ Accordingly, 25 percent is used to calculate the labor costs for each construction contract used in this study; therefore, the total labor costs for this study is \$7,219,089,615 (28,876,358,458 x .25). It should be noted that this is a conservative figure as it only uses federal construction categories from one type of contract: Construction of Structures and Facilities. There are other types of federal contracts that could fall under the use of PLAs.

The third step in the study methodology is to conduct a detailed examination of the effect PLAs would have on non-union workers' take home pay. To examine this effect, non-union contractors were surveyed to provide actual data on the amounts by which non-union workers

⁷ See also the U. S. Bureau of the Census, *Census of Construction Industries, 1992*, or the *1997 Statistical Abstract of the United States*, p. 713

stand to lose their take home wages as a result of the use of PLAs on government projects. In each case, non-union workers' take home pay is reduced by at least 20 percent when their employers enter into PLA arrangements. The primary source of this reduction stems from the fact that the federal Davis-Bacon Act and many state "prevailing wage" laws currently allow employers a credit for their fringe benefit payments. Under each of these laws, employers are permitted to pay their employees cash equivalent to the costs of the prevailing fringe benefits, thereby increasing the take home pay of their employees on government projects. When contractors are required to sign PLAs that require payment of union fringe benefits, however, the amount of workers' take home pay is the difference between the gross amount and the fringe benefit amount paid to the union shop. This amounts to nearly a twenty percent reduction in take home pay. The second component of reduced wages is the union dues that must be paid. The estimated amount for union dues payments is another 2 percent.⁸ The math for this calculation is corroborated by the following real world examples obtained from contractors:⁹

Example 1: On a normal federal or state job, the required base rate for journeymen is \$34.40 per hour, with a required benefit rate of \$18.96 per hour, totaling \$53.36 per hour for the prevailing wage. This means that the performing contractor must pay its licensed journeymen working in the field an aggregate of \$53.36 in wages and benefits. Per State DOL standards, the Company is permitted to "credit" against this \$53.36 the hourly value of the benefits provided to employees for vacation days, paid holidays, sick days, profit sharing and health insurance. For licensed journeymen, the State DOL recognizes this "credit" for the Company's benefits at \$9.33 per hour, which means that the journeymen receive the remaining amount of \$44.03 per hour in gross wages. Were it to perform these same jobs under the PLA, the company would also have to pay the listed benefits of \$18.96 per hour directly to the trade union. The remaining "base rate" of \$34.40 would then be paid to the individual journeyman as gross wages. The \$9.63 difference in the wages actually received represents a more than 21 percent decrease in take home pay for the journeymen in this example. In addition, the union along with its trust would have a windfall of \$449,288 (24,471 hours * 18.36 fringe benefits paid to unions). Another 2 percent could be added, as employees would be required to pay union dues.

⁸ The source of the two percent is as follows: a typical union dues payment is two and a half times (**is it 2.5 percent or times?**) the wage rate. Suppose the wage rate is \$50 per hour. Union dues would be \$150. Suppose there are four 40-hour work weeks in a month (though workers typically average less than 40 hours per week). The monthly payroll is \$8,000 (1,600 hours @ \$50). This amounts to 1.875 percent (150/8,000). An initiation fee would also be paid. This fee rounds the union dues to around two percent (**so where does the 2.5 percent number come from?**). While 2 percent is a reasonable average, specific unions may require larger or smaller union dues.

⁹ The sources of these examples are contractor statements in the possession of the author. Many similar statements were filed by contractors with the FAR Councils in the ongoing rulemaking proceeding on Executive Order 13502.

Example 2: Our Company hires insulators. The DB wage is \$17.14 plus \$2.72 per hour. Our Company pays for the health insurance, vacation and training and does not take credit for these benefits as allowed by the law. Our Company also pays half of the fringe benefit (\$1.36) to a retirement account for the employee, which is 100% vested on day one. Therefore the employee receives \$18.50 per hour in gross wages and \$1.36/hr in retirement. Our Company has a number of current federal projects under contract with a total of 13,109 hours. If these contracts were subjected to a PLA, the workers wages would be reduced to \$17.14, as the \$2.72 would be paid to the union. This would result in a reduction of wages of \$17,855 ($\$1.36 * 13,109$) and a reduction in retirement of another \$17,855. In addition, the workers would pay union dues totaling \$1.37 per hour or \$17,987. The cumulative reduction in wages, benefits and union dues is \$53,697 ($\$17,855 + \$17,855 + \$17,987$). So instead of receiving \$260,742 workers receive \$207,045. This computation illustrates a slightly greater than 20 percent reduction in wages for workers as a result of working under the PLA. In addition, the union along with its trust would have a windfall of \$53,697.

Example 3: XYZ is an electrical contracting firm that does federal work. They are also working on projects, which could be covered by the executive order thus being subjected to a PLA. The DB wage is \$19.04 plus 5.88 in fringe benefits. XYZ pays health insurance on each employee and takes a credit for those benefits of \$1.29/hr. Therefore the employee receives \$23.63/hr in gross wages and \$1.29/ hr in health care benefits. The employees receive vacation and training for which no credit is taken. The total hours associated with these projects is 23,939. If these projects were subjected to a PLA the workers would give up \$4.59/hr ($\5.88 less credit taken of \$1.29) totaling \$109,880 plus union dues. XYZ would have to continue to pay the \$1.29/hr in health insurance totaling \$30,881. The union dues amount to another \$1.25 per hour or \$29,924. The cumulative reduction in wages and benefits to the workers is \$139,804 ($\$109,880 + \$29,924$). This amounts to a greater than 23 percent reduction in wages for the workers as the contract is subjected to a PLA. The windfall to the union in this example is \$140,761 ($\$5.88 * 23,939$) in fringe benefits paid, as workers will not receive benefit.

Example 4: N is a defense contractor performing federal construction work in California and elsewhere. On one representative project exceeding \$25 million, our fringe benefit costs for medical/dental and savings and retirement are less than the entire fringe packet called for by Davis-Bacon, and we have therefore paid the difference in cash to our employees, adding to their take home pay the sum of \$290,485.84. Were the project performed under a PLA, the take home pay of our employees would be reduced by this amount and N would have to pay an additional \$289,099.34 ($\$184,798.92$ medical/dental and $\$104,300.42$ savings & retirement) to maintain our medical/dental and savings and retirements plans, both of which require inclusion of all employees.

All of these examples arrived at a percentage in excess of 20 percent as a measure of the loss of take home pay as a result of non-union construction workers having to move to the use of PLA arrangements. As noted earlier, in an effort to be conservative, the 20 percent figure is used as a measure of the reduction in take home wages for workers as they are forced to use PLAs.

It should be noted that the above examples are typical of non-union construction contractors experience when dealing with PLAs. A July 2009 survey of federal contractors

conducted by Associated Builders and Contractors, Inc. (ABC) received approximately 70 specific comments from contractors regarding their perspective on PLAs. The following comments are representative of the discriminatory impact of fringe benefit costs of PLAs for non-union contractors and their employees:

[O]pen shop employees do not want to pay union dues to work on a project or pay into a union pension plan because they will never see a dime of that money! "Open shop" contractors do not want to pay into a union Health & Welfare program or union trust fund because they have their own benefits program and would have to pay twice.

* * *

If I have to sign one time agreements with the unions to do a job, my employees & myself as the employer have to pay twice for medical benefits none of which they will ever receive from the union, because they will never work enough hours to qualify.

* * *

We pay our employees the base wage plus fringes on their check. If we sign a PLA the employees pay would reduce between 20% to 30% and that money would go to the unions for which the employees would get no benefits. On top of that our company would be tied to pension plans with unfunded liabilities for which our company may have to pay at the conclusion of the agreement with the unions.

* * *

If I choose to have my employees work on the PLA job I now have to pay into the union for their benefits [that they will never see] plus maintain their existing benefits, raising my labor costs which will get passed on to the Owner.

* * *

A Merit contractor would have to contribute to two separate employee benefit programs, such as medical benefit plans. The Merit contractor would have to continue to offer the plan he has been offering to his employees and also make contributions to the Union sponsored medical benefit program. Employees of the Merit contractor may never reach eligibility to receive benefits under the union's benefit plans and the contractor does not want to place his employees in this situation. A

Federal PLA excludes its own tax payers from working on a project that is using their tax dollars to build.

* * *

As a pavement-marking subcontractor on highway projects, our crews are on the project sporadically, not every day. As such they would not work the total number of hours required by the PLA to take advantage of any of the benefits provided by the union. The dues they would pay, along with the fringe benefit portion of their hourly wage, would go to the union. The union in turn would receive these dollars and have no obligation to provide the employee with benefits. This would be a windfall for the union. The employee would still need to arrange health and other benefits outside of the union umbrella.¹⁰

These reports are confirmed by examination of the fringe benefit components of Davis-Bacon Wage Determinations throughout the country. As shown in Table 1, the fringe benefit components of the total compensation found to be “prevailing” based upon the union scales in many counties significantly exceeds 20 percent.¹¹ Moreover, Table 2 summarizes the national averages for these trades and shows that the average fringe benefit package exceeds 27 percent. In the absence of a PLA, non-union employers are entitled to pay their employees in cash equivalent to the amount of such fringe benefits, or can take credit against the mandated fringe benefit requirements for their existing costs of providing equivalent fringe benefits. In most cases, once a PLA is imposed, however, such employers must pay the fringe benefit amounts to union trust funds, and either reduce their employees’ take home pay, or duplicate their own costs of providing such benefits to make sure that their employees receive proper health care, retirement and vacation benefits.

¹⁰ More than 450 contractors responded to a July 15, 2009 *ABC Newsline* survey question whether they would be “more likely or less likely” to bid on a public construction project containing a PLA requirement. 98 percent of the respondents stated that they would be “less likely” to bid. ABC conducted a lengthier survey on July 14, 2009 where all 233 respondents (100 percent) said they would be “less likely” to bid on a public construction project containing a PLA requirement.

¹¹ The fringe benefit percentages for six representative union trades – bricklayer, carpenter, electrician, painter, plumber and roofer – vary from an average of 24 percent to 33 percent of total compensation, with a total average of 27 percent.

As noted earlier, an assumption of the model is that union shops currently perform 15 percent of the contracts; therefore, the non-union portion of labor costs is reduced from \$7,219,089,615 to \$6,136,226,173 ($.85 * 7,219,089,615$). This figure is then used to compute the additional costs for employers as they begin to pay fringe benefits to union benefit funds. In an effort to arrive at a conservative estimate and avoid overstatement, the figure of 20 percent is used to compute the lost wages for workers. The amount shown in Table 3A is presented as \$1,227,245,235 ($.20 * \$6,136,226,173$). The lost take home wages are then shown based on whether the contractors move to PLAs in the percentages of 10, 25, or 50 percent. Specifically, Table 3A reveals lost take home wages for non-union workers range from \$122,724,524 (10 percent) to \$613,622,617 (50 percent).

The respective additional costs to employers are exposed next in Table 3B. The percentage of 25 percent is used for additional employer cost due to the fact that the average fringe benefit package shown in Table 2 is over 27 percent. Therefore, 25 percent of \$6,136,226,173 is \$1,534,056,543. Finally, the additional costs to employers are shown based on the extent that current non-union contracts are performed under PLAs. These amounts are \$153,405,654 at 10 percent; \$383,514,136 at 25 percent; and \$767,028,272 at 50 percent. In summary, evidence is shown that additional costs to employers would range from \$153 to \$767 million.

Potential Withdrawal Liability for Employers

A withdrawal liability arises if and when an employer decides to cease contributions to a multi-employer pension plan, provided that certain conditions are met under the Multi-Employer Pension Plan Amendments to ERISA. Employers may decide to leave a multi-employer pension plan for any number of reasons. Some of the most common reasons are bankruptcy, ceasing operations, switching to non-union employees, and/or choosing an alternate employee benefits model with less expensive contribution amounts (See Binns 2009).

The business must then pay its "fair share" of any unfunded benefits to ensure the pension funds remain both financially stable and solvent. That "fair share" is known as withdrawal liability. Withdrawal liabilities are often painful to employers because they can be a very large dollar amount and may be required to be paid in a single lump sum payment.

In their simplest terms, employers who become signatory or otherwise bound to collective bargaining agreements incorporating these defined benefit plans are obligated by the contract to make contributions to the pension trust for the benefit of their employees.¹² Over time, employees' rights to a future pension benefit become vested, meaning that they have earned and cannot be deprived of the promised pension benefit. The pension trust fund employs actuaries who evaluate the plans' promised future benefits against the assets and income available to the trust to fund those future benefits. When a plan's assets and anticipated income (contributions and earnings) are equal to or greater than future promised benefits, it is considered fully funded. However, when the assets and anticipated income are insufficient to satisfy promised benefits, the plan is considered underfunded.

Impact of Economy on Multiemployer Pension Plans

For the 20-year period leading up to 2003, most multi-employer defined benefit plans enjoyed positive financial results. Defined benefit pension plans were profitable due to both positive stock market results and increasing contribution rates. Due to this profitability, benefits promised to employees rose and employers were given time off from making full pension contributions. Plans initially started to unravel during the 2002 – 2003 drop in the stock market when the Dow Jones dipped slightly below 8,000 from a high of 12,000. Some plans suffered losses of 30 percent to 40 percent in the assets available for plan benefits. As a result, many defined benefit plans became seriously underfunded. Fortunately, the market began a recovery, which saw the Dow exceed 14,000 in 2008. Since this time however, the Dow has once again

¹² Discussion in this section relies on an excellent article by Ronald W. Brown, Esq. "Withdrawal Liability Is Back with a Vengeance."

dipped below 8,000 and put even more pressure on defined benefit pension plans.¹³

A recent study in BNA (Maresca 2009), reported that multiemployer plans have become significantly underfunded across all industries, thus threatening their long-term viability. To deal with these financial struggles, certain parties have agreed to allocate both employer pension and health plan contributions to cover pension plan obligations alone. In other cases, unions have agreed to sacrifice some or the bargaining units' entire wage increases to maximize pension plan contributions.

The Critical or Endangered Status of Construction Union Pension Plans

Among other things, the Pension Protection Act of 2006 mandated that employees must be informed whether their pension plans are funded adequately to pay current and future pension benefits. This act requires companies to value the assets of the pension plans on an actuarial basis yearly to ensure that plans are funded adequately. If at the beginning of the year, the funded percentage of the pension plan is less than 80 percent, the plan is considered to be in an "endangered" status. Moreover, if at the beginning of the year, the funded percentage is less than 65 percent, than the plan is considered to be in a "critical" status. A plan will also be considered to be in a "critical" status if the plan's current level of contributions currently is or is projected to be, in any of the next three plan years, less than the minimum contribution amount required by the law for that year. If a pension plan falls into either a "critical" or "endangered" status, the trustees of the plan are required to take actions to improve the funding for the pension plan. These actions include establishing steps and benchmarks for the pension plans to improve their funding status over a specified period of time.

As of July 31, 2009, the Department of Labor had received notice that more than 130 multi-employer pensions plans were in "Endangered" status. In addition, over 100 pension plans

¹³ See also Washington Examiner, June 7, 2009, "Almost Half Of Top Unions Have Underfunded Pension Plans." (reporting that many of the largest construction industry union pension funds are currently underfunded).

were in "Critical" status.¹⁴ As Presented in Table 4A, 82 of the plans in the Endangered status are in the construction industry. Similarly, Table 4B reveals that 41 pension plans in Critical status are also in the Construction Industry.

A recent survey of multiemployer plans conducted by the Segal Co., benefits and human resources consulting firm, of calendar year plans' zone status shows that multiemployer plans across all industries are struggling to meet their funding obligations under the PPA as a result of the market collapse. In 2008, only 7 percent of plans surveyed were in the red zone, but that percentage jumped to 32 percent in 2009.¹⁵

Risks of Withdrawal Liability in the Construction Industry

It is during difficult economic times such as today that the risk of mass contractor withdrawal from pension plans and withdrawal liability penalties on contractors is the greatest. In fact, actuaries are busy calculating and determining the impact of the 2008 economy on multi-employer pension plans (Thiel and Wrigley, 2009). They note a potential perfect storm is forming on the horizon for employers with respect to withdrawal liability. Most commonly under MPPAA, withdrawal liability is determined by calculating the percentage the withdrawing employer's total contributions over the five year period preceding the withdrawal bears to the total contributions by all participating employees for the same time period and multiplying that number times the total unfunded vested benefits for withdrawal liability purposes. For example, assume a single unionized construction company suffers a withdrawal liability to the Laborers International Union pension plan. Further assume that the contractor's pension contributions for the five-year period before the sale amounted to \$250,000, and that total contribution by all employers was \$250,000,000. The employer's withdrawal liability would be .001 times the total

¹⁴ See <http://www.dol.gov/ebsa/criticalstatusnotices.html>.

¹⁵ The Segal survey also reports that in 2008, only 10 percent of plans were in the yellow zone, but 29 percent of plans surveyed in 2009 were in endangered status. Between 2008 and 2009, plans in the green zone dropped by approximately 44 percentage points, with 83 percent of plans falling in the green zone in 2008 but only 39 percent falling in the same zone in 2009 (127 DLR A-5, 7/7/09). A summary of the Segal survey is available at <http://www.segalco.com/publications-and-resources/multiemployer-publications/surveys-studies/?id=1275>.

unfunded liability. If the total unfunded liability were one billion dollars, the individual contractor would owe \$1,000,000 in withdrawal liability.

The rules governing withdrawal liability for employers in the construction industry are somewhat unique. In such cases, employers will not incur withdrawal liability unless (1) they cease having an obligation to contribute to the fund, and (2) continue to engage in the same business in the same geographic area covered by the plan. In other words, a construction industry employer will not incur withdrawal liability if it goes out of business or moves its business out of the geographic area covered by the plan: however, it will incur withdrawal liability if it “goes non-union” and continues operations in the area.¹⁶

Another example of increased employer contributions in the construction industry is discussed in BNA (Maresca 2009). Due to the market collapse and sharp decline of activity in the building and construction industry, many construction employers have withdrawn from multiemployer funds and ceased building activity in the same area served by members of the multiemployer fund. In these cases, employers were not subject to withdrawal liability. As a result, the long-term viability of the plans from which they withdrew were put under increased pressure. When several construction employers leave a multiemployer plan without incurring withdrawal liability, that leads to a decline in contributions so that the remaining plans could end up in the red zone. As a result, these plans would have to comply with the PPA's requirements for emerging from critical status. Furthermore, when a construction employer goes bankrupt, a multiemployer plan looking to collect from the employer is at a loss. The plan can not collect money from the bankrupt employer nor would the plan have a claim in bankruptcy court as there is no official liability.

¹⁶ As one of numerous examples of such withdrawal liability being imposed on construction contractors, see, e.g., *Technical Metallurgical Services, Inc. v. Plumbers and Pipefitters National Fund*, 213 Fed. Appx. 268 (5th Cir. 2007) (upholding assessment of \$125,336 in withdrawal liability against a construction contractor who ceased making contributions to an underfunded pension fund).

The extent of withdrawal liability exposure for construction employers who sign union-only PLAs has not been fully tested in litigation.¹⁷ Because of the significant risks and substantial sums of money involved, however, non-union contractors should be reluctant to incur the potential costs of participation in any underfunded union pension plan.

Conclusion

On February 6, 2009, President Obama signed an Executive Order authorizing executive agencies of the federal government to require every contractor or subcontractor on a large-scale construction project to negotiate or become a party to a PLA with one or more labor organizations. For a variety of reasons, the execution of federal construction contracts through PLAs reduces take home pay for workers and substantially increase costs for non-union employers. In addition, non-union employers may be exposed to significant withdrawal liability as a result of being required to participate in multi-employer (union) pension plan.

This paper provides evidence on the amounts of both lost take home wages for non-union employees and additional costs to employers as a result of the adoption of PLAs. Lost wages for non-union construction workers range from around \$123 million to over \$613 million, depending on the assumption made for companies executing contracts through PLAs. Similarly, additional costs to non-union employers range from \$153 million to \$767 million. In total, the move to PLAs could cost non-union workers and their employers from over \$275 million to over \$1.38 billion annually. In addition, non-union contractors may face significant exposure to withdrawal liability if they become participants in multi-employer pension plans imposed upon them by PLAs.

¹⁷ See *Northern New England Carpenters Pension Fund v. H.P. Cummings*, 2003 WL 1856440 (D.Me., April 10, 2003), where the Carpenters Pension Fund attempted to assess withdrawal liability against a former signatory to a PLA. A federal court affirmed an arbitrator's holding that, because the "jurisdiction" of a PLA was a particular project, subsequent work in the geographic area would not be "in the jurisdiction..." within the meaning of 29 U.S.C. § 1383(b)(2) unless the contractor went back to perform work on the same site within 5 years.

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Table 1

Wage Rate States and Current Wages for the County of the State Capital												
	Bricklayers		Carpenters		Electricians		Painters		Plumbers		Roofers	
State	Rate	Fringes	Rate	Fringes	Rate	Fringes	Rate	Fringes	Rate	Fringes	Rate	Fringes
Alaska	\$33.82	\$15.80	\$33.30	\$17.85	\$36.47	3%+\$18.15	\$27.18	\$17.22	\$35.54	\$18.32	\$32.12	\$10.50
Arkansas	\$19.11	\$0.00	\$15.06	\$3.42	\$24.41	\$9.47	\$14.41	\$5.34	\$23.51	\$8.14	\$14.59	\$4.64
California	\$33.49	\$16.00	\$27.97	\$19.73	\$38.43	3%+\$11.40	\$30.07	\$11.86	\$39.32	\$13.45	\$22.82	\$13.88
Connecticut	\$32.10	\$19.48	\$29.00	\$17.80	\$35.40	\$19.51	\$27.87	\$14.00	\$36.32	\$21.36	\$31.10	\$14.46
Delaware	\$27.50	\$15.93	\$29.57	\$15.09	\$33.92	\$19.85	\$24.43	\$13.28	\$25.90	\$6.81	\$30.00	\$22.70
Hawaii	\$34.70	\$16.47	\$36.20	\$19.02	\$38.80	30.6%+\$11.65	\$31.15	\$21.75	\$34.60	\$20.73	\$32.35	\$14.43
Illinois	\$25.34	\$15.10	\$28.66	\$14.75	\$33.22	\$11.65	\$27.99	\$12.77	\$37.00	\$13.40	\$27.25	\$12.90
Indiana	\$29.85	\$10.13	\$27.52	\$10.74	\$31.45	\$14.74	\$24.95	\$9.73	\$30.71	\$13.38	\$22.03	\$7.97
Kentucky	\$23.68	\$9.25	\$11.03	\$0.00	\$13.86	\$0.00	\$11.65	\$0.62	\$11.88	\$0.00	\$10.72	\$0.00
Maine	\$14.39	\$0.00	\$14.09	\$3.47	\$26.30	\$12.34	\$11.03	\$0.00	\$12.59	\$1.91	\$11.97	\$1.32
Maryland	\$19.71	\$0.00	\$15.91	\$3.62	\$32.90	5.25%+\$12.15			\$34.20	\$14.21	\$25.80	\$8.26
Massachusetts	\$43.54	\$22.05	\$36.93	\$21.64	\$41.21	\$22.79	\$30.76	\$19.70	\$44.97	\$21.73	\$34.56	\$19.87
Michigan	\$27.58	\$14.04	\$25.34	\$12.62	\$38.60	\$15.84	\$21.74	\$9.77	\$32.33	\$16.89	\$25.85	\$10.85
Minnesota	\$34.39	\$14.65	\$33.79	\$12.50	\$33.60	3%+\$17.01	\$30.94	\$15.60	\$36.91	\$17.59	\$32.49	\$13.65
Missouri**	\$31.75	\$15.27	\$31.27	\$9.67	\$33.60	\$21.23	\$28.61	\$10.24	\$32.00	\$18.68	\$28.00	\$13.75
Montana			\$18.49	\$8.40	\$28.36	4.25%+\$8.55	\$13.93	\$2.70	\$18.40	\$3.55	\$18.90	\$0.54
Nebraska	\$18.20	\$4.60	\$14.50	\$1.22	\$24.37	4.5%+\$8.42	\$11.01	\$0.00	\$15.46	\$1.53	\$11.89	\$0.60
Nevada	\$22.94	\$9.14	\$27.54	\$9.76	\$30.90	3%+\$13.02	\$23.94	\$7.75	\$27.28	\$15.02	\$14.23	\$3.03
New Jersey	\$36.70	\$20.97	\$35.72	46%	\$45.90	54%	\$26.67	\$13.80	\$43.00	\$23.70	\$31.57	\$16.50
New Mexico	\$22.85	\$6.65	\$22.26	\$6.20	\$27.80	5%+\$8.00	\$16.60	\$4.40	\$28.30	\$11.05	\$17.72	\$5.31
New York	\$26.29	\$14.70	\$26.20	\$14.95	\$29.75	\$16.20	\$24.34	\$6.30	\$30.31	\$17.18	\$21.65	\$9.42
Ohio	\$26.30	\$10.90	\$24.86	\$9.88	\$28.00	\$12.41	\$23.12	\$8.87	\$30.73	\$16.61	\$22.16	\$8.90
Oregon	\$32.32	\$14.05	\$27.56	\$13.30	\$34.05	3%+\$14.08	\$19.29	\$7.14	\$35.69	\$16.99	\$21.29	\$9.90
Pennsylvania	\$27.84	\$12.92	\$24.56	\$11.52	\$27.20	\$14.69	\$22.17	\$8.90	\$30.27	\$16.99	\$30.00	\$22.70
Rhode Island	\$33.75	\$17.00	\$30.00	\$19.96	\$34.08	47.41%	\$27.25	\$14.62	\$33.61	\$23.22	\$28.70	\$16.45
Tennessee			\$15.08	\$2.15	\$21.40	\$10.32	\$16.78	\$5.80	\$29.07	\$11.95		
Texas	\$13.25	\$0.00	\$20.15	\$5.47	\$25.18	\$6.59	\$24.69	\$7.16	\$10.06	\$0.31		
Vermont			\$15.22	\$0.00	\$23.00	20%+\$6.20			\$25.10	\$11.85		
Washington	\$32.16	\$11.59	\$32.49	\$11.26	\$32.71	3%+\$13.19	\$19.91	\$6.85	\$35.55	\$15.32	\$27.00	\$9.29
West Virginia	\$26.54	\$14.40	\$23.98	\$10.84	\$30.45	\$13.61	\$22.68	\$10.00	\$28.94	\$14.98	\$16.00	\$5.05
Wisconsin	\$30.61	\$14.10	\$29.06	\$13.36	\$31.00	3%+\$15.77	\$25.65	\$13.10	\$34.78	\$12.76	\$18.00	\$3.28
Wyoming	\$22.62	\$0.00	\$13.85	\$0.00	\$26.93	5%+\$9.35	\$12.14	\$0.00	\$21.78	\$10.60		

* States in Bold denote states with strong prevailing wage laws

All wages shown represent wages under the Building Construction Projects category found on <http://www.access.gpo.gov/davisbacon/allstates.html>

Spaces left blank indicate that no prevailing wage rate was available for that category of worker.

Table 2

Country Averages			
Professions	Rate	Fringes	% Fringes of Total Wage
Bricklayers	\$27.70	\$11.56	25.96%
Carpenters	\$24.91	\$10.02	25.06%
Electricians	\$31.04	\$14.36	32.91%
Painters	\$22.43	\$9.31	25.70%
Plumbers	\$29.57	\$13.44	28.40%
Roofers	\$23.60	\$10.01	26.12%
Overall Avg.	\$26.54	\$11.45	27.36%

Table 3A
 Lost Take Home Wages for Non-Union Construction Workers
 Based on Percentage of Contracts Which Move to PLAs

20% of Non-Union Labor Cost	10%	25%	50%
\$1,227,245,235	\$122,724,524	\$306,811,309	\$613,622,617

Table 3B
 Additional Costs to Employers from Payment of Fringe Benefit Costs to Unions
 Based on Percentage of Contracts Which Move to PLAs

25% of Non-Union Labor Cost	10%	25%	50%
1,534,056,543	\$153,405,654	\$383,514,136	\$767,028,272

Table 4A

Construction Related Multi-Employer Pension Plans with an Endangered Status
Asbestos Workers' Local 47 Retirement Trust Fund
Asbestos Workers Local No. 23 Pension Fund
Asbestos Workers Local No. 27 Pension Plan
Bay Area Painters and Tapers Pension Trust Fund
Bricklayers and Allied Craftsmen Local No. 16 Pension Plan
Bricklayers and Allied Craftsmen Local No. 5 of New Jersey Pension Plan
Bricklayers and Allied Craftworkers Local 5 New York Pension Plan
Bricklayers Local No. 1 of PA Pension Fund
Bricklayers Union Local No. 6 of Indiana Pension Fund
Carpenters Pension Trust Fund of Northern California
Cement Masons' Area 699 Pension Fund
Cement Masons' Union Local 592 Pension Fund
Connecticut Carpenters Pension Fund
Connecticut Plumbers and Pipefitters Pension Fund
Construction and General Laborers Local 190 Pension Plan
Electrical Workers Fringe Benefit Funds
Heavy and General Laborers' Funds of New Jersey Local 472 and 172
Indiana Laborers Pension Fund
International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers Local No.79 Pension Plan
International Association of Heat and Frost Insulators and Asbestos Workers Local No. 40 Pension and Welfare Plan
International Brotherhood of Electrical Workers Eastern States Pension Plan
International Brotherhood of Electrical Workers Local 164 Joint Pension Fund
International Brotherhood of Electrical Workers Local 237 Pension Fund
International Brotherhood of Electrical Workers Local 456 Pension Fund
International Brotherhood of Electrical Workers Local No. 223 Pension Fund
International Brotherhood of Electrical Workers Local No. 38 Pension Fund
International Brotherhood of Electrical Workers Local Union No. 357 Pension Trust Fund
International Brotherhood of Electrical Workers Local No. 98 Pension Plan
International Brotherhood of Teamsters Freight Drivers Local Union No. 557 Pension Fund
International Brotherhood of Teamsters Joint Council No. 83 of Virginia Pension Plan
International Brotherhood of Teamsters Local 177 Multiemployer Retirement Plan
International Brotherhood of Teamsters Local 445 Construction Division Pension Fund
International Brotherhood of Teamsters Local 705 Pension Plan
International Brotherhood of Teamsters Local 731 Excavators and Pavers Pension Trust Fund
International Brotherhood of Teamsters Local 804 and International Association of Machinists and Aerospace Workers Local 447 - Multi-Employer Retirement Plan
International Brotherhood of Teamsters Local 808 Pension Plan
International Brotherhood of Teamsters Local 813 and Local 1034 Severance and Retirement Fund

Construction Related Multi-Employer Pension Plans with an Endangered Status
International Brotherhood of Teamsters Local 814 Pension Trust Fund
International Brotherhood of Teamsters Local 837 Pension Fund
International Brotherhood of Teamsters Local No. 436 Building Material Drivers Pension Fund
International Brotherhood of Teamsters Local Union No. 854
Iron Workers' Local No. 25 Fringe Benefit Funds
Ironworkers Fringe Benefit Funds Local Unions No. 549 and 550
Ironworkers Local 340 Retirement Income Plan
Ironworkers Local 498 Pension Fund
Ironworkers Pension Plan of Western Pennsylvania
Laborers District Council of Western Pennsylvania Pension Fund
Laborers International Union of North America National (Industrial) Pension Fund
Laborers Local 157 Pension Plan
Laborers Local 1000 Pension Fund
Laborers Local 17 Pension Fund
Laborers Local 186 Pension Fund
Laborers Local 3 Sales Pension Fund
Laborers Local 322 Pension Plan
Laborers Local 35 Pension Plan
Laborers Local 7 Pension Plan
Laborers Union Local No. 1298 of Nassau and Suffolk Counties Pension Fund
Local Union No. 466 Painters, Decorators, and Paperhangers Pension Plan
New York State International Brotherhood of Teamsters Conference Pension and Retirement Fund
Northwest Ironworkers Retirement Trust
Painters District Council No. 3 Pension Plan
Painters Union Pension Fund
Plumbers and Pipefitters Local 162
Plumbers and Pipefitters Local No. 520 Benefit Fund
Plumbers and Pipefitters Local Union No. 333 Fringe Benefit Funds
Plumbers and Pipefitters Local Union No. 74 Pension Plan
Plumbers and Pipefitters Local Union No. 9 Pension Plan
Plumbers and Steamfitters Local No. 150 Pension Fund
Plumbers and Steamfitters Local No. 577 Pension Plan
Plumbers Local 773 Pension Fund
Plumbers Local Union 690 Industry Funds of Philadelphia and Vicinity
Plumbers United Association Local 773 Pension Fund
Plumbers, Pipe Fitters and MES Local Union No. 392 Pension Fund
Plumbing and Pipe Fitting Industry Local 219 Pension Plan
Sheet Metal Workers' Local 292 Fringe Benefit Funds
Sheet Metal Workers' Local 73 Pension Plan
Sheet Metal Workers' Local 7-Zone 3 Benefit Funds

Construction Related Multi-Employer Pension Plans with an Endangered Status
Sheet Metal Workers Local No. 40 Pension Fund
Sheet Metal Workers' Local No. 19 Benefit Fund
Teamsters Negotiated Pension Plan
Toledo Area Sheet Metal Workers Pension Plan and Trust
Toledo Roofers Local No. 134 Pension Plan
Twin City Iron Workers Pension Fund
UA Local 190 Plumbers/Pipefitters/Service Technicians Gas Distribution Fringe Benefit Funds
United Association of Plumbers and Pipefitters Local 51 Pension Plan
United Brotherhood of Carpenters and Joiners of America Local No. 370 Pension Plan
United Steelworkers District 10 Local 286 Pension Plan
Upper Peninsula Plumbers' and Pipefitters' Pension Fund
Western Pennsylvania Teamsters and Employers Pension Fund
Will County Carpenters Local 174 Supplemental Pension Fund
WV Plumbers and Pipefitters Local Union 152 Combined Pension Funds

* Information obtained from the United States Department of Labor Employee Benefits Security Administration

**Bolted Names represent National Unions

Table 4B

Construction Related Multi-Employer Pension Plans with a Critical Status
Asbestos Workers Local No. 8 Retirement Trust Plan
Asbestos Workers Philadelphia Pension Plan
Asbestos Workers Syracuse Pension Plan
Asbestos Workers Union Local 64 Pension Plan
Baton Rouge Sheet Metal Workers Pension Fund
Bricklayers and Allied Craftsmen Local 1 of Maryland, Virginia and the District of Columbia Maryland Pension Fund
Bricklayers and Allied Craftsmen Local No. 7 Pension Plan
Bridge, Structural, Ornamental and Reinforcing Ironworkers Local 207 Pension and Annuity Fund
Carpenters Pension Trust Fund - Detroit and Vicinity
Carpenters Pension Trust Fund for Northern California
Cement Masons Local 783 Pension Trust
Cement Masons Local Union No. 681 Pension Plan
Central New York Painters and Allied Trades Pension Plan
Heat and Frost Insulators and Allied Workers Local 47 Fringe Benefit Funds
Insulators Local Union Number 112 Pension Plan
International Brotherhood of Electrical Workers Local No. 129 Pension Fund
International Brotherhood of Electrical Workers Local Union 380 Pension Plan
International Brotherhood of Electrical Workers Local Union No. 1158 Pension Plan
International Brotherhood of Electrical Workers Local Union No. 90 Pension Fund
International Brotherhood of Teamsters Local 210 Pension Plan
International Brotherhood of Teamsters Local 469 Pension Fund
International Brotherhood of Teamsters Local 575 Pension Fund
International Brotherhood of Teamsters Union Local No. 52 Pension Fund
Iron Workers Local No. 12 Pension Fund
Iron Workers' Locals No. 15 and 424 Pension Plans
Iron Workers-Laborers Pension Plan of Cumberland Maryland
Ironworkers Local 340 Retirement Income Plan
Laborers International Union of North America, AFL-CIO Local 734 Pension Fund
Local 295/Local 851 International Brotherhood of Teamsters Employer Group Pension Trust Fund
Local Union No. 863 International Brotherhood of Teamsters Pension Plan
Michigan Carpenters' Fringe Benefit Funds Pension Plan
New England Teamsters and Trucking Industry Pension Fund
Painters and Allied Trades Paint Makers Pension Plan
Paintmakers Local Union No. 1310 Pension Plan
Plumbers and Steamfitters Local No 106 Pension Trust Fund
Plumbers and Steamfitters Local No 267 Benefit Funds
Sheet Metal Workers National Pension Fund
Teamsters Local No. 264 Moving Division Pension Fund

Construction Related Multi-Employer Pension Plans with a Critical Status

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 198 AFL-CIL Pension Plan

United Brick and Clay Workers of America, AFL-CIO District Council No. 9 Pension Plan

Wyoming Carpenters Pension Fund

* Information obtained from the United States Department of Labor Employee Benefits Security Administration

**Bolded Names represent National Unions

Figure 1

