



New Data Weighs on Debate Over Project Labor Agreements

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Government contracts for the construction of public projects raise a host of often controversial questions. One is whether such contracts should include a provision requiring the prime construction contractor and all of its subcontractors to sign and work under a project labor agreement (PLA). Most of the labor unions that represent construction craft workers are strong advocates for such a provision. Most of the employers in the construction industry are equally strong opponents.

For many years, both sides have argued their case. Among other things, the North America Building Trade Unions (NABTU) have claimed that “PLAs are used widely in the private sector” and it has implied that they can “ensure the timely delivery of high-quality construction projects.”¹ For many reasons, construction contractors have disputed both claims. They have, for example, pointed to the latest report on union representation and membership. On January 20, 2022, the Bureau of Labor Statistics revealed that in unions represented only 13.6% of all construction workers and that only 12.6% of such workers were union members.² Logically, it follows that construction contractors successfully deliver most of the projects in the United States without signing any labor agreements, much less project labor agreements.

Suffice it to note that the debate has continued, in part, because empirical data has been scarce. In 1998, the General Accounting Office (GAO) found that “[t]he total number of PLAs in use is unknown because there is no complete or comprehensive database on the use of PLAs in the public or private sector.”³ GAO also found that differences in the success of projects with and without PLAs “could be attributable to [other] factors” and that “drawing definitive conclusions . . . would be difficult.”⁴ Today, one will still search in vain for any comprehensive database on the use of PLAs and each construction project remains unique. Government agencies do, however, have one new body of data to consider. In it lies powerful evidence that mandating PLAs will not improve economy or efficiency in the procurement of public construction projects or otherwise facilitate their delivery.

National Association of Building Trade Unions, “Project Labor Agreements,” https://nabtu.org/workplace_standards/project-labor-agreements/, last visited August 4, 2021.

² Press Release, “Union Members – 2021,” Bureau of Labor Statistics (January 20, 2022), available at <https://www.bls.gov/news.release/pdf/union2.pdf>.

³ GAO/GGD-98-82, “Project Labor Agreements, the Extent of Their Use and Related Information,” May 1998, at 2, available at <https://www.gao.gov/products/ggd-98-82>.

⁴ Id. at 13.

- In 315 (or 99.4%) of those cases, the professionals decided not to require a PLA. In only 2 (or 0.6%) of those cases did they decide, to the contrary, to require a PLA.

The individual explanations for their decisions to not require PLAs for those 315 projects are far from uniform. In many cases, the professionals expressly stated their reasons for not requiring a PLA, but in others, they simply stated the factors they had considered in the process of deciding to not require a PLA. In addition, the professionals gave or identified more than 12 different reasons for, or factors in, their decisions. And they combined and recombined those reasons and factors in many different ways. One does find that some of the explanations are identical. In one report, the professionals provided the same explanation for 22 decisions. In another, they provided they provided the same explanation for 10. A large majority of the explanations are, however, unique to the individual projects on which they were made.

Other details that the reports reveal include the following:

- In the process of explaining 156 of their 317 decisions on the merits (or 49.2% of the time), the professionals made an express reference to economy or efficiency, and in each and every one of those 156 cases (or 100% of the time) , they decided not to require a PLA.
- In 152 of those 317 cases (or 48% of the time), they found that .53 625.18 Tm2/4I912 0 612 792 reW9 54

adequate labor supply. In 217 of those 218

