

# UNION-ONLY PROJECT LABOR AGREEMENT CASE STUDY: THE WASHINGTON, DC CONVENTION CENTER

## COSTS OF CONSTRUCTION

- Prior to entering into a union-only Project Labor Agreement (PLA), costs for construction of the DC Convention Center were publicly estimated at \$650 million (*D.C. Auditor's Report*).
- An actual cost of construction was \$850 million (*Washington Business Journal, March 2003*).

## USE OF LOCAL VS. OUT-OF-TOWN CONTRACTORS

As a result of the PLA, no bids were received from dozens of local non-union subcontractors who were qualified to build the convention center. (Over 80 % of the construction industry workforce in Washington, D.C. is non-union). Out-of-town contractors had to be imported to perform the work, at an increased price, on many of the most significant segments of construction, including the following:

- |                               |  |
|-------------------------------|--|
| ✓ <b>Structural steel:</b>    | Havens Steel, Kansas City, MO                        |
| ✓ <b>Steel Erection:</b>      | Derr Steel Erection Co., Eules, TX                   |
| ✓ <b>Electrical:</b>          | Fischbach & Moore, New Providence, NJ                |
| ✓ <b>Precast Concrete:</b>    | Modern Mosaic, Ontario, CAN                          |
| ✓ <b>Mechanical/Plumbing:</b> | Poole & Kent, Baltimore, MD (joint venture)          |
| ✓ <b>Glass Installation:</b>  | Allglass Systems, Penmoel, PA                        |
| ✓ <b>Drywall:</b>             | Component Assembly Systems, NY, NY (Lanham office)   |
| ✓ <b>Excavation:</b>          | Cherry Hill Construction, Jessup, MD (joint venture) |
| ✓ <b>Landscaping:</b>         | Cherry Hill Construction, Jessup, MD                 |
| ✓ <b>Painting:</b>            | Tiffany Decorating, Chicago, IL                      |

*(Washington Business Journal, June 11, 2001)*

## QUALITY/SAFETY OF CONSTRUCTION

In April 2001, mid-way through construction under the union-only PLA, part of the convention center roof collapsed. Engineers probing the collapse ultimately determined that improper installation of a 180-foot steel truss by unionized ironworkers employed by an out-of-town contractor contributed to the collapse. The supplier of the steel, Havens Steel of Kansas City, later declared bankruptcy.

*(Washington Post, May 11, 2001; Engineering News-Record, April 30, 2001)*

**UNION-ONLY PLAS: NOT WORTH THE COST!**

# **STATEMENT OF DISSATISFACTION WITH STADIUM FINANCING PLAN AND PROJECT LABOR AGREEMENT**

**Capitol Area Minority Contractors and Business Association  
313 Parkland Avenue S.E.  
Washington, DC 20043**

**Robert Green III, President**

**May 16, 2005**

**Testimony of Mark S. Hall, esq., Vice President and General Counsel**

Distinguished Members of the City Council of the District of Columbia:

My name is Mark S. Hall, and I am representing the Capitol Area Minority Contractors and Business Association or CAMCBA. CAMCBA is a private business association comprised of majority and minority-owned contractors and businesses primarily involved in the construction related trades. Our mission is to increase the involvement of minority firms in construction projects occurring in the Baltimore-Washington metropolitan area; to increase employment opportunities for minorities in the construction trades with all contractors doing business in the Metro Area; to enhance vocational training in the construction trades for minorities to prepare them for a lifetime of employment opportunities; and to act as an advocate for the construction industry. It is within the scope of our advocacy efforts that we find ourselves before you today with concerns related to the construction of a new baseball stadium in Washington, DC. We are grateful that the City Council has given us the opportunity to express these concerns.

Let me begin by stating that our Association has been closely monitoring real estate development in the District. We are aware that over 380 development projects in the District have been completed over the past 5 years and have an estimated value of over \$15 billion dollars. These projects have changed the landscape of the District, specifically in Downtown and established commercial corridors. Indeed, development in the District is undergoing unparalleled growth. New offices, hotels, retail stores, museums, eateries, educational facilities, theatres and residential buildings are expanding one of the strongest regional economies in the country. After almost 40 years of neglect, the District has been at the center of this region's redevelopment over the last 10 years with real estate values increasing by over 500% in some areas.

Presently, the Council is debating the merits of a mixed financing plan versus public financing, as well as whether the benefit of building the ballpark at Buzzard's Point outweighs the cost of constructing the facility at RFK. These concerns are important as our esteemed legislative body contemplates what is best for the District and its citizens. But we would be remiss if we didn't include a few other concerns as the Council rules on the Amendment to the Ballpark Financing Act. For a City with a significant percentage

of its population living in poverty, one would think that this good fortune of bringing baseball to the District and building a new baseball stadium would benefit its most disadvantaged residents. However, it appears as if the policies of District's economic development agencies do not consider these residents when they make their business decisions. It becomes even more frustrating when these persons are appointed to these posts in the name of public service. For the most part, they are not responsive to public inquiries and, as a matter of course, do not seek to include DC residents in the decision making process.

For example, in the construction of the new DC Convention Center, LSDBE participation was abysmal with less than \$1.0 million of work going to District firms on a project with an estimated cost of over \$850 million, less than one tenth of one percent of the total development cost. If we include all LSDBE's in the Metro Area, the level of participation was only \$22 million out of \$850 million, less than 3% of the total development cost. This is a far cry from the goal of 35% LSDBE participation. Similarly, less than 20% of all construction workers on the Convention Center were DC residents, a far cry from the 50% goal set by the District. When inquiries were made to the DC Sports and Entertainment Commission regarding these matters, they were non responsive. The new Convention Center is a fabulous facility and should make the District competitive with other cities in getting convention business. We agree that it should increase hospitality and sales tax dollars which help to pay for services provided by the District. But we are skeptical when the District says that its residents will directly benefit from the construction of such facilities.

Now as we look at the proposed baseball stadium, we can't help but feel that we will again be overlooked even though the language in the construction and financing agreements for the project state that certain participation must occur. What good is it having language stating that disadvantaged firms and District residents must participate if the District does not adequately monitor compliance? Similarly, if the District is monitoring compliance, and good faith efforts are being made to include disadvantaged firms and employ District residents, why are we still not in compliance? If District officials know that it is impossible for firms to comply with these utilization goals, what good is it to put emphasis on getting the language in the contract if there is no capacity available to meet these stated objectives?

The District chose to utilize a project labor agreement for constructing the new convention center. It is our understanding that a project labor agreement or PLA, is an agreement made between a construction client and a group of local unions or building trades council, and require that all employees on the construction project be represented by a union. PLA's require that workers be hired through union halls, that non-union workers pay dues for the length of the project, and that union rules on pensions, work conditions and dispute resolution be followed. The benefits of the utilizing PLA's have been stated as providing a requisite amount of skill labor, providing an effective tool for controlling the quality and cost of the skilled labor force, and employing a standardized set of building practices that provide for safe workplaces and timely completion. CAMCBA concedes that these issues are major concerns to any large complex building

program. But because we were not engaged at a level near what was contemplated by this Council, we are questioning if such an agreement is effective or necessary.

Recent studies show that 90% of all construction workers residing in the District are nonunion, and 85% of all construction workers nationally are not members of labor unions. Similarly, 90% of all construction projects in the District is being performed by nonunion or “open shop” contractors. So we how can we conclude that having PLA’s are increasing opportunities for DC contractors or construction workers when less than 1% of total contract cost went to DC contractors and less than 20% of all construction workers were DC residents? Similarly, with 90% of all construction projects in the District performed by nonunion contractors, is there a documented shortage of skilled workers in the construction trades? Similarly, local labor unions tout their apprentice programs as examples of their commitment to the District workforce. But out of nearly 1200 workers on the convention center project, less than 20 apprentices living in the District were documented.

If we look at the cost effectiveness of PLA’s one can look at the Wilson Bridge and the new Convention Center. For example, with a PLA in place, only one bid was received by the construction client and was 70% over budget estimates. When the PLA was removed, and the project received 14 responses and came in almost exactly at budget estimates. Progress is on the project is on schedule and 12% of the work on the project is going to DC contractors. The new Convention Center started with a budget \$600 million and ended up with a cost of \$850 million, and increase of over 40%. So with concerns about the cost to District residents being foremost, why are we still utilizing a PLA on the new ballpark?

In terms of safety and quality of work, even with a PLA in place, the convention center roof collapsed midway through construction because of improper installation of a 180 foot steel truss by union ironworkers employed by an out of town contractor from Texas. We are not contending that mistakes will not happen, but PLA’s won’t stop mistakes from happening either.

The District has yet to conduct a proper due diligence investigation and demonstrate the need for and economic benefits of the proposed PLA. No report was ever presented for the new convention center. What does this mean for DC contractors? Evidence shows that PLA’s are anticompetitive and lessen the number of contractors that bid on construction projects. Will that be the case in the District? What effect does a PLA have on DC contractors and workers? The District employs prevailing wage and first source agreements on all construction projects financed with City dollars. If the District is monitoring for compliance, why do we need union representation for workers? Similarly, union wage rates are higher than prevailing wage in this area. If we are concerned about cost, why are we using PLA’s?

Now we are not going to sit in front of our City Council and state that nonunion contractors are doing all they can to include disadvantaged businesses and contractors, and hiring District residents on major construction projects in the District. Similarly, area

firms have not complied with District goals surrounding apprenticeship programs. CAMCBA is ever vigilant in putting pressure on these contractors to utilize minority contractors and District residents, and we are making significant headway with area contractors in these areas, and would be willing to share these results with the Council. But with a virtually nonexistent union presence in the District within the construction trades, it is unfair to use union-only project labor agreements on projects that DC residents and businesses pay for, if there is no documented overwhelming reason to use them. We want the Council to consider our concerns about the utilization of PLAs on these major construction projects, and add them to the debate about what is the right thing for the new baseball stadium. CAMCBA does not promote the use of PLA's, and feel if the City Council looks at these agreements on their merits, they would come to the same conclusion.

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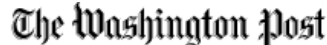
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### Improper Bracing Blamed in Collapse; 2 Engineering Reports Say New Convention Center Was Left Vulnerable to Wind

[FINAL Edition]

The Washington Post - Washington, D.C.

Author: Manny Fernandez  
 Date: May 11, 2001  
 Start Page: B.05  
 Section: METRO  
 Text Word Count: 754

The consulting structural engineering company of James Madison Cutts, which is also the structural engineer of record on the project, found that a single truss had been erected without the proper temporary bracing, which is the welding or bolting of structural elements that provides stability before the erection process is completed. "In our opinion, if it were adequately braced, a moderate wind would not have caused a failure," said the author of one of the reports, company President James Madison Cutts.

The area affected in the collapse is 1 percent of the total roof area, [Greg Colevas] said. He said work has continued in all areas of the building except one directly beneath the collapse. Some of the collapsed steel has been dismantled in the last few days, but the majority has been stabilized, and cranes are scheduled to begin removing it next week.

Colevas said he did not want to comment in detail about the reports' findings until the steel contractors had a chance to review them. The steel fabrication and erection for the new convention center was subcontracted to Havens Steel. The Kansas City, Mo., company then subcontracted the erection work to Derr Steel Erection Co. of Euless, Tex.

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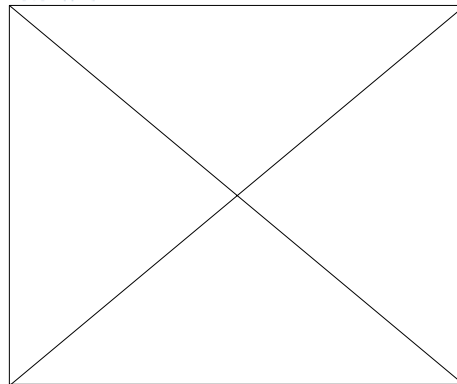
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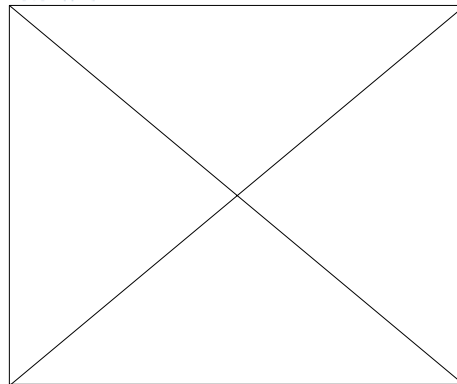
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November 13, 2000

Edward S. Harris  
Assistant Attorney General  
State Highway Administration  
707 North Calvert Street  
Baltimore, MD 21202

Re: Union-Only PLAs

Dear Mr. Harris:

You have asked for an explanation of those provisions of the Washington Convention Center Project Labor Agreement to which non-union contractors object and which have caused a significant number of qualified non-union contractors to refuse to bid on this project. Contrary to statements made by some Maryland state officials, the Convention Center PLA is dramatically different from the stabilization agreements entered into on the Ft. McHenry Tunnel and/or Ravens Stadium, neither of which required any contractor to enter into a collective bargaining agreement with any union as a condition of performing work. The differences between the previous non-discriminatory stabilization agreements and the union-only Convention Center PLA are set forth below.

As the outset, the Convention Center PLA is "union-only" because Article III ("Union Recognition") plainly states that all employers performing work on the project must "recognize the Union signatory hereto as the sole and exclusive bargaining representative for all craft employees within their respective jurisdictions working on this project within the scope of this Agreement." No previous Maryland government project has contained such a requirement. Union recognition carries with it a panoply of rights and obligations under the National Labor Relations Act which extend beyond the four corners of the PLA itself, and which most non-union contractors do not wish to subject their employees to without their consent.

Article XI ("Union Security") of the Convention Center PLA further requires all employees working on the project to pay dues and service fees to their (unwanted) union representative. The Article purports to impose a less onerous requirement upon employees of small DBE contractors, stating that such employees do not have to become union "members," but this distinction (applicable only to a few employees anyway) is wholly illusory. Under well settled law under the NLRA, *no* employee can be forced to become a "member" of a union, even where the collective bargaining agreement contains such a requirement on its face. The U.S. Supreme Court has long held that union "membership" requirements can only be enforced in such a way as to require employees



to pay union dues and fees, and nothing else. Thus, the same requirement will apply to both DBE and non-DBE employees: they will be forced to pay union dues and service fees to a union who they have not asked to represent them. The Convention Center PLA, by drawing a meaningless distinction between the two groups of employees, actually assists the unions in confusing and coercing non-DBE employees into accepting full fledged union membership, as a condition of working on the project. The above mentioned non-discriminatory stabilization agreements in Maryland contained no union dues or fee requirement whatsoever.

Article XII ("Union Representation") of the Convention Center PLA requires each employer to recognize one of its workers as a union steward who will have to be permitted to perform union duties during working time and will become involved in all matters pertaining to the employer's workforce, whether the employer's employees want such interference or not. Again, previous stabilization agreements in Maryland contained no such requirement for non-union employers.

Article V ("Referral of Employee") requires employers to obtain all new hires from the union hiring halls. If the union cannot provide referrals, the employer can find its own, but must then turn over to the union all such names and social security numbers. Non-union employers are rightly concerned that unions would use such information, combined with the union security provisions above, to organize or "strip" the employees from their non-union employment. Much has been made of the fact that Article V.6 contains an exception from union referral for employees currently on the Employer's payroll at the time the Employer signs a contract to perform work on the Project. This provision assumes that non-union employers are so overstuffed that they can transfer core workers to the Project without any new hires. In reality, non-union employers are frequently unwilling to subject their core workers to a union-only PLA because they will be forced to pay union dues and work under union representation and work rules against their will. Article V.6 is therefore of little practical value to many non-union contractors. Previous stabilization agreements in Maryland imposed no restrictions whatsoever on the non-union employers' ability to procure their own workforces.

Article V.13 of the Convention Center PLA requires all employers to participate in a union-sponsored training program established by Clark/Smoot and the Building Trades Council. Non-union employers are also restricted in their ability to hire apprentices under the PLA. First Article V.12 states that "the Union will refer and the Employer will employ apprentices in the respective crafts." Many non-union employers have their own apprenticeship programs and do not wish to hire through union referrals. A later provision, Article VI.3(c), allows non-union employers to continue to fund their own apprenticeship programs instead of the union's, but makes no provision for non-union employers to obtain apprentices from any source other than the union's program. Again, previous Maryland stabilization agreements contain no restrictions on employers training programs.

Article VI requires all employers to pay into union fringe benefit funds unless such employers have "established for the benefit of employees a qualified fringe program for

medical insurance, apprenticeship, and/or retirement...provided such programs are consistent with the predetermined rate wage/benefit package...." The phrase "consistent with" is nowhere defined, so that non-union employers who provide different types of fringe benefit plans have no assurance that their benefits will relieve them of the obligation to pay into the union plans (which will provide no benefits to their own employees, in any event). Other non-union employers do not provide benefits in every one of these areas. Whereas Davis-Bacon and state prevailing wage laws permit them to pay extra cash to their workers to make up the difference, the Convention Center PLA forces such employers to pay into union benefit plans in addition to any cash supplements to their own employees. Adding to the confusion is that non-union employers are forced to make benefit payments on behalf of any union members in their employ. Recall that all of their workers are required by the contract to join the union, and it will be understood why the provisions of Article VI are another illusory protection for non-union employers. Of course, on previous Maryland stabilization agreements, there has been no requirement that any non-union employer pay into a union benefit plan for any reason.

In addition to these most salient discriminatory provisions in the Convention Center's PLA, there are numerous other clauses which impose burdens on non-union contractors without any justification or precedent in Maryland. These include the grievance procedure (Article IX) which again forces non-union contractors to deal with union representatives for their employees; and the Work Rules provision (Article VII), which states, inter alia, that "practices not a part of terms and conditions of an applicable collective bargaining agreement will not be recognized."

For each of these reasons the Convention Center PLA places unacceptable and discriminatory restrictions on the way non-union contractors have successfully performed 85% of the work throughout the region, with no attendant benefits. The Convention Center PLA is clearly a "union-only" agreement, in marked contrast to previous Maryland stabilization agreements. Imposition of a Convention Center-style PLA on the Wilson Bridge would discourage non-union bidders, increase the costs of construction and would violate the State of Maryland's competitive bidding laws.

Please contact me if you have any additional questions.

Sincerely,

Maurice Baskin

# News

## Project Labor Agreements

### **Agreement for D.C. Convention Center Accommodates Local Workers, Businesses**

**A** project labor agreement that requires the use of local workers and sets aside a significant portion of the project for small and disadvantaged business enterprises has been approved for use on the \$650 million Washington, D.C., Convention Center.

Clark/Smoot joint venture and the Washington Building Trades Council signed the agreement Jan. 26, according to Michael J. Dorsey, secretary-treasurer of the council. The client is the Washington Convention Center Authority.

Utility relocation already has begun, according to a spokesman for Clark/Smoot, and excavation at the job site is expected to begin next month. Neither utility relocation nor excavation is covered by the project agreement.

Manhours on the project, covering two and a half city blocks, are estimated by Dorsey at 7 million over four years. Peak employment is projected at 800 on-site craft workers. Wage rates on the federally assisted project are governed by the Davis-Bacon Act.

Three local crafts have not signed the agreement—the Bricklayers, Painters, and Roofers. The Roofers are expected to sign the agreement, Dorsey said. “The door remains open” for the other two crafts to sign, he said.

**Thirty-five Percent LSDBE Goal.** Of the approximately \$500 million of the project that will be spent for construction, a Clark/Smoot official said the agreement goal is that at least 35 percent of the work will be set aside for Local, Small, Disadvantaged Business Enterprises (LSDBEs). Work will be awarded LSDBEs in contracts of \$7 million or less. A firm can be local, small, or disadvantaged to qualify for this classification.

Dorsey considered the provision “fairly aggressive” and one that “recognizes the interests of the District of Columbia community.” He added that “it will take hard work to make sure this takes place.”

According to Dorsey, union security language in the agreement was modified to make it easier for LSDBEs to participate. The union security clause states, in part, that employees of LSDBEs “may become members of a union but will not be required” under the agreement as a condition of employment.

“Non-members will, however, be required to pay service and administrative dues to the union representing their trade on the project,” the contract states. Employees of non-LSDBE contractors will be required to comply with the union security provisions applicable in their craft’s local agreement.

The minimum wage is set under the Davis-Bacon Act on this federally assisted project. Federal prevailing wage rates apply to employees of LSDBE contractors on contracts valued at \$7 million or less. Davis-Bacon

rates also will apply for contractors who are not LSDBEs if they are not signatory to a local labor agreement. Otherwise, contractors with contracts valued at \$7 million or more who are signatory to local agreements must honor wage and benefit rates in those agreements.

**Project Participation Goals.** Another outreach mechanism sets project participation goals that 51 percent of all new hired craft workers be District of Columbia residents and 42 percent of each craft employed by each employer are to be members of ethnic minority groups. In addition, the contract sets a goal that 51 percent of new apprentices be District of Columbia residents and that 6.9 percent of each craft employed by each employer be women.

Not addressed in the agreement is the extent to which apprentices and pre-apprentices will participate in the project. Dorsey said the first meeting to consider this language will be held Feb. 19. Included in the meeting will be the U.S. Department of Labor and the District of Columbia’s Department of Employment Services Apprenticeship Council “to introduce residents to trade employment on the project.”

One model apprentice program under consideration by the parties is Step Up, a program used by the Department of Housing and Urban Development in 13 cities. Under Step-Up, HUD provides—with assistance from union journeymen—training and jobs for public housing residents while housing is being renovated, made more energy efficient, and cleared of lead-based paint and other environmental hazards. The program provides up to one year of experience for public housing residents to work with journeymen after which they may be placed in a union apprenticeship program.

Dorsey said the convention center project will be different than most Step Up projects because it will more specific to commercial, instead of residential, construction.

Other provisions agreed to by the parties include the following:

- Fines of \$10,000 per craft per shift will be imposed as liquidated damages for violation of the no-strike clause. Ira Jaffe is the permanent arbitrator to settle any job disputes.

- Discrimination is prohibited against any job applicant for their membership or nonmembership in a union.

- Employees who voluntarily quit or are terminated for cause (except drug use or acts of violence) may be eligible for re-employment on the project no sooner than 90 days after termination.

- Pre-employment testing for substance abuse is a condition of employment.

- The parties agreed to establish training programs in the immediate neighborhood of the project and to provide instructors and teaching materials.

- No subsistence or travel pay but two hours of show-up pay is allowed for lack of work that is not