United States Department of Labor

New Hampshire Job Corps Center

October 28, 2010
Evaluation and Report
On the Viability of a
Project Labor Agreement (PLA)

for the
New Hampshire Job Corps Center Construction Project

Prepared for

The US Department of Labor

Submitted by

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I. Executive Summary

Hill was retained by the office of Job Corps within the United States Department of Labor (DOL) as an expert witness in anticipation of litigation and to evaluate the viability of a Project Labor Agreement (PLA) on the New Hampshire Job Corps Center Construction Project (the Project) under Executive Order 13502 (the Order) (Appendix A) and its implementing regulations at 48 C.F.R. Chapter 1, Part 22, and to provide assistance to the DOL in defense of its position in the event of litigation. Hill was selected based upon its extensive experience in all aspects of the PLA process in over 40 projects.

The report provides a brief history of PLAs, which are used as “pre-hire” umbrella agreements used for construction of specific projects during specific periods of time. The Order defines a PLA as, “…a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project…”

The Project will include construction of six (6) buildings along with a Welcome Center totaling approximately 154,000 gross square feet. The buildings are identified as the Welcome Center, Administrative/Wellness Center, Educational/Vocational Center, and Cafeteria with Warehouse Facilities, two (2) Dormitories and a Recreation Center. The project also includes: site development of an approximately 25-acre parcel including grading, utility installations, site/security, lighting, sidewalks/walkways, roadways, parking areas and landscaping, site clearing, and rock excavation.

The Hill team spent several days in Manchester and Concord, New Hampshire, gathering Project-related data and interviewing stakeholders, including the Governor, Commissioner of Labor, Mayor and Aldermen of Manchester, legislators, contractors, developers, labor leaders and other interested parties. All concerned were eager for the Project to proceed as quickly as possible and there were “pro” and “con” views with respect to a PLA. Many were unaware and/or misinformed as to what a PLA is and why it may be utilized on a project.

It was determined that the workforce is comprised of 20-25 percent union and 75-80 percent non-union workers in the Manchester Region. Statewide, the workforce is approximately 10 percent union and 90 percent nonunion. On major power/industrial projects, the work is done both with union and non-union labor, and tends to be predominantly union labor. On commercial projects it is generally split 50/50. There are no shortages in skilled labor and none are expected during Project construction. In the event shortages do occur, the unions have the ability to obtain workers from affiliates out of state.

In researching workforce and construction history and projections, it was learned that there has been a long history of violations and abuse of labor and insurance laws and regulations in both public and private construction. It involves primarily the misclassification of employees as independent contractors; thus avoiding payment of insurance and benefits. It may also involve classifying a worker in a lower-paid trade; thus paying less in insurance and benefits.

Though there have been continuing efforts by both the New Hampshire Legislature, by statute, and the Governor, through Executive Order, to remedy the problem, it remains rampant in both public and private procurement.
After thorough review of the data collected, the information received from stakeholders, the nature of the Project and the PLA criteria set forth in the Order and implementing regulations, it has been concluded that a PLA is appropriate and feasible for the Job Corps Center Project in Manchester, New Hampshire.

It is recommended that:

1. The small business “Total Set-Aside” designation be removed to increase the pool of potential bidders.


3. The executed PLA be included in the solicitation bid document.
II. Introduction and Background

A. Hill International

Hill was retained by the office of Job Corps within the United States Department of Labor (DOL) as an expert witness in anticipation of litigation and to evaluate the viability of a Project Labor Agreement (PLA) on the New Hampshire Job Corps Center Construction Project (the Project) under Executive Order 13502 (the Order) (Appendix A) and its implementing regulations at 48 C.F.R. Chapter 1, Part 22, and to provide assistance to the DOL in defense of its position in the event of litigation.

Hill has provided similar PLA support services in more than 40 public and private capital construction projects totaling in excess of $25 billion in construction costs. Hill has recommended both for and against the feasibility of PLAs based upon the facts and circumstances of each individual project. Hill has participated in every aspect of the PLA process, including the feasibility and economic benefits study, labor analysis, negotiations, drafting, approval, execution, implementation and administration, and co-chairing Labor Management Committees on at least ten projects throughout the Northeast. Hill has participated in the defense of several legal challenges to PLAs and has provided testimony in litigation in defense of these studies.

B. What is a Project Labor Agreement

1. History

A PLA, sometimes referred to as a “Pre-Hire Agreement,” is a type of collective bargaining agreement commonly used for decades as a management tool for expeditious, cost effective construction on private construction projects, and with increasing frequency, on large, time-sensitive or other special needs public construction projects, as well as in connection with publicly owned construction programs. For example, PLAs have been used in connection with large-scale, multi-year construction programs by the New York City School Construction Authority and the Los Angeles Unified School District, as well as in connection with scores of smaller school construction programs nationwide. On projects or programs where a PLA is used, it is mandatory for both union and non-union contractors (employers) to accept the PLA as a condition of being awarded the contract.

Section 8 (f) of the National Labor Relations Act — NLRA:29 U.S.C.Sec.158(f), amended in 1959, specifically provides for the use of pre-hire agreements in the construction industry. This provision is in recognition of the particular and unique conditions existing in that industry. Short-term employment associated with individual construction projects often precludes post-hire collective bargaining; however, contractors require predictable cost estimates, a dependable supply of skilled labor, and on-site labor harmony, which a pre-hire agreement or PLA provides.

A PLA typically applies to a single project or series of specified projects as part of a construction program, and has no bearing or relevance to any other work a contractor or union may be involved in during the same period of time. A PLA is an umbrella labor agreement for the construction of a specific project or program of work, including its component parts or packages during a specific
period of time. Historically, all parties involved in the construction were required to be signatories to the PLA, which supersedes any conflicting prior-existing collective bargaining agreements which might otherwise apply to the work. A PLA typically provides for standardized work practices, hours, holidays, grievances, disputes and arbitration procedures, and the overall labor/management harmony for the duration of the project. PLAs often contain economic concessions, and, as important, a PLA precludes strikes, lockouts, work stoppages and/or any other disruption of work for any reason during the term of the PLA.

For purposes of this report, the Order defines the term Project Labor Agreement or PLA as a, "...pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(ff)."


PLAs have been utilized in the private sector for almost a century and in the public sector, with little notice, for almost as long. For example, the Grand Coulee Dam was built on the Columbia River in the 1930s with a PLA and followed immediately thereafter by the Shasta and Hoover dams. During and following World War II, PLAs were routinely used in nuclear and military facilities and NASA facilities such as the Kennedy Space Center and numerous military installations. In the 1970s and 1980s, they were utilized on Disney World, by Toyota, General Motors and major oil companies (Trans Alaska Pipeline and several petro-chemical plants).

With the ever-decreasing market share and power of the highly unionized workforce after World War II, and the corresponding increase in market share and power of the non-union or open-shop contractors and contractor associations, the first major legal challenge to a public PLA occurred in the early 1990s on the multi-year, multi-billion-dollar project involving the court-mandated clean-up of Boston Harbor. The project involved scores of contractors and unions, all of which were required to become signatories to a PLA. The challenge was made on a federal pre-emption theory, arguing that the government entity-owner requirement that all successful bidders become parties to that PLA constituted an impermissible state intrusion into the labor relations of project contractors and was pre-empted by the National Labor Relations Act (NLRA).

In its March 1993 landmark decision, Associated Builders and Contractors of Massachusetts/Rhode Island, Inc. vs. Massachusetts Water Resources Authority 507U.S.218 at223, (hereinafter Boston Harbor), the US Supreme Court held that although the government could not impose a PLA in its regulatory capacity, it was not prohibited from benefiting from a PLA wherein the government entity was acting in its proprietary capacity as an owner or a purchaser of construction services in the construction industry marketplace. In considering the legislative intent of Congress in amending the NLRA Sections 8 (e) and 8 (f), the court stated,

"It is evident from the face of this statute [National Labor Relations Act, as amended] that in enacting exemptions authorizing certain kinds of project labor agreements in the construction industry, Congress intended to accommodate conditions specific to that industry."
Such conditions include, among others, the short term nature of employment which makes post-hire collective bargaining difficult, the contractor's need for predictable costs and a steady supply of skilled labor, and a long standing custom of pre-hire bargaining in the industry.

There is no reason to expect these defining features of the construction industry to depend upon the public or private nature of the entity purchasing contracting services. To the extent that the private purchaser may choose a contractor based upon that contractor's willingness to enter into a pre-hire agreement, a public entity as purchaser should be permitted to do the same... In the absence of any expressed or implied indication by Congress that a state may not manage its own property when its pursuers its purely proprietary interest, and where analogous private conduct would be permitted, this Court will not infer such a restriction."

C. New Hampshire Job Corps Center

Executive Order (E.O.) No. 13202 issued by President George W. Bush in February, 2001, and amended by E.O.13208 in April 2001 to allow exemptions essentially prohibited PLAs and similar agreements on all federally funded projects. As a result, there were no PLAs utilized in construction of federal buildings, major highways and bridges, and a vast number of infrastructure and other projects in which there was any federal funding involved from 2001 until April 28, 2010, when a PLA was executed on the Edith Green-Wendell Wyatt Federal Building in Portland, Oregon, pursuant to President Obama's Executive Order 13502.

On February 6, 2009, President Obama issued E. O. 13502 (the Order). In the Order, the President revoked E. O. 13202 and E.O. 13208 and announced that it is the Federal Government's policy to encourage large-scale construction projects (i.e., projects were the cost to the Federal Government exceeds $25 million) in order to promote economy and efficiency in Federal procurement. By its terms, the Order applies to all solicitations for contracts issued on or after the effective date of the action taken by the Federal Acquisition Regulatory Council (FAR Council) to implement the Order.

In July 2009, the FAR Council transmitted for publication in the Federal Register, two notices that (1) repeal, effective immediately, a rule prohibiting agencies from requiring PLAs (this rule implemented E.O.13202); and (2) propose for public comment a new rule to implement the President's Order.

The Order further provides that, "...Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government..."; and that, "...The use of a project labor agreement may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal construction contracts."

In an effort to comply with the Order, in August, 2009, the Office of Job Corps within the (DOL) announced its intent to require a PLA in the forthcoming solicitation for the construction of the Manchester, New Hampshire Job Corps Center. A solicitation was issued on October 1, 2009, for a firm-fixed-price contract for the construction of a new Job Corps Center for a population of 300 students, including 272 residents and 28 non-residents. It was understood that this would be a large-scale project that would require an extensive period of time for construction, a large capital outlay, exacting construction and performance
standards requiring high labor skills for many operations, and complex scheduling and managerial organization.

On October 5, 2009, North Branch Construction, Inc. filed a protest with the GAO in response to the above-referenced solicitation, alleging that the PLA, “...unduly restricts competition, is wholly unsupported, and violates the Competition in Contracting Act (CICA), Executive Order 13502, the Small Business Act and numerous procurement regulations.” GAO dismissed the protest when DOL canceled the solicitation.

On April 13, 2010, the FAR Council published its final ruling and regulations implementing the Order. The regulations state, in pertinent part, (22.503: Policy).

(a) Project labor agreements are a tool that agencies may use to promote economy and efficiency in Federal procurement. Pursuant to Executive Order 13502, agencies are encouraged to consider requiring the use of project labor agreements in connection with large-scale construction projects.

(b) An agency may, if appropriate, require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations if the agency decides that the use of project labor agreements will—

(1) Advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(2) Be consistent with law.

(c) Agencies may also consider the following factors in deciding whether the use of a project labor agreement is appropriate for the construction project:

(1) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.

(2) There is a shortage of skilled labor in the region in which the construction project will be sited.

(3) Completion of the project will require an extended period of time.

(4) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

(5) A project labor agreement will promote the agency's long-term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs.

(6) Any other factors that the agency decides are appropriate.

In August 2010, the DOL, after lengthy discussions with Hill senior staff regarding PLA background, experience and demonstrated knowledge of the PLA process, retained the services of Hill to determine the viability of a PLA for the Project; to submit a report with conclusions and recommendations; and, to provide assistance as may be required in support and defense of the DOL decision. All parties are anxious to commence Project construction without further delay.
III. The Project

A. Project Description

The New Hampshire Job Corps Center will be located in Manchester, New Hampshire near the intersection of Dunbarton Road and Straw Road. A 25-acre site is presently an undeveloped wooded lot. The project generally consists of site clearing, site improvements and the construction of six (6) individual buildings, and a Welcome Center, each having a specific function, constructed in a campus-like setting. The buildings and their function are as follows:

- Building A – Administration and Wellness
- Building B – Education
- Building C – Cafeteria
- Building D – Dormitory
- Building E – Recreation
- Building F – Dormitory
- Building G – Welcome Center (Visitors)

Building A, Administrative and Wellness, is a planned 21,245-square-foot, two-story structure. The building will house administrative offices, healthcare facilities and career counseling areas.

Building B, Education, is a planned 33,360-square-foot two-story structure that includes classrooms, office and study areas.

Building C, Cafeteria, is a planned 22,940-square-foot two-story structure. The building will include kitchen facilities, a servery, dining areas, a culinary arts kitchen, a bakery, rooms for workshops, vocational, food preparation, dishwashing, cart washing, offices, storage areas and built-in freezer and refrigeration units.

Building D, Dormitory is a planned 27,940-square-foot, two-story structure housing thirty two (32) four-bedroom units and two (2) two-bedroom units, along with lounges, resident advisor rooms, laundry facilities and study areas.

Building E, Recreation, is a planned 19,260-square-foot, single-story structure that includes a gym, theater, aerobics room, separate men’s and women’s weight rooms, a recreation area and offices.

Building F, Dormitory, is a planned 27,940-square-foot, two-story structure housing thirty two (32) four-bedroom units and two (2) two-bedroom units, along with lounges, resident advisor rooms, laundry facilities and study areas.

Building G, Welcome (Visitors) Center, is a planned 900-square-foot, single-story structure that includes waiting and check-in areas, offices and storage areas.
The building construction generally consists of concrete foundation walls with a concrete slab on-grade on the first floor and a concrete floor supported on metal deck by steel framing above. The exterior walls typically are comprised of metal studs with insulated exterior wood or metal siding and glass curtain wall systems. The roofs are typically standing seam metal roofs. Interior walls typically are of metal studs and drywall. Walls at interior stairs, elevator shafts and storage areas are comprised of concrete masonry units. Electrical, mechanical and plumbing systems are included to support the intended building function and each building has a sprinkler system.
IV. Construction and Labor Analysis

A. Introduction

Hill team members spent most of five days in the Manchester/Concord, New Hampshire area, interviewing and conferring with contractors, developers, leaders of the New Hampshire Building and Construction Trades Council (BCTC), five of the twelve Manchester Aldermen and Mayor Gatsas, the New Hampshire Commissioner of Labor, Governor Lynch, legislators, and various community and business leaders. The unanimous consensus is in favor of the Project and construction to begin as soon as possible. It should be noted that it is the intent of the Governor, the Commissioner of Labor, the Mayor of Manchester and all stakeholders that local residents first and New Hampshire residents second be utilized to the maximum in the Project workforce. Not surprisingly, there is difference of opinion on whether or not a PLA should be utilized.

B. Workforce Makeup

With respect to the work force, New Hampshire currently has an unemployment rate of 5.7 percent, some 40 percent below the national average. Within the construction industry, the rate is 10–12 percent and will increase during the winter months. Though official, reliable numbers could not be found concerning the union/non-union composition of the workforce, the best estimate within the NHDOH, the contractors, and the BCTC is approximately 90 percent open shop and 10 percent union statewide. In the Metropolitan areas of Manchester, the largest city in New Hampshire, and Concord, the Capital, the percentage of union workers increases to about 20 to 25 percent.
C. Recent Construction History

1. Power/Energy Projects

A review of major Projects completed and/or currently under construction reflects a mix of union and non-union participation. Also, it is common practice for non-union prime contractors in the area to utilize union subcontractors in various trades.

Public Service New Hampshire (PSNH) has an ongoing generating plant maintenance program and has recently completed a number of large projects. In discussions with a Director of Public Service New Hampshire (PSNH), he stated that PSNH currently uses IBEW union workers for all maintenance work and has, in the past, utilized both open shop and union contractors on major construction and retrofit work. In 2004, PSNH let two contracts on a $78 million retrofit of the Schiller Station power plant to open shop contractors. Contractor performance was completely unsatisfactory with a continuing inadequate supply of skilled labor; the completion schedule was late and costs exceeded their budget. The contractor, at his own expense, found it necessary to hire union contractors with skilled workers to complete the project.

PSNH is currently completing a $457 million “scrubber” project at the Merrimack Station in Bow, New Hampshire, using union contractors under a National Maintenance Agreement, which is similar to a PLA. The Director is extremely satisfied with contract performance, stating that, “We are currently in the major construction phase, with about 350 skilled craft workers on site. The building trade’s workforce is very productive, and the quality of work is exceptional. That has been one of the big reasons that we have revised our overall project cost estimate downward and set a new, earlier, completion date.”

At 75 percent completion the Project is about a year ahead of schedule and cost estimates have been reduced from $457 million to $430 million. His parting comment was that PSNH has tried procurement of construction services both ways and will utilize union contractors in the foreseeable future.

PLAs and similar pre-hire labor agreements have been utilized in New Hampshire for decades. Construction of the Seabrook Nuclear Power Plant, more commonly known as Seabrook Station, located approximately forty miles north of Boston on the Atlantic coast, was completed in 1986. Construction was on-going for more than six years, and employed hundreds of skilled workers which, after employing all available workers locally, were obtained from throughout New England and the Eastern states. Construction was completed under a Building and Construction Trades Department (BCTD) General Presidents’ Maintenance Agreement (similar to a PLA). Full-power operation of Unit One began in 1990 and has remained in operation to the present time under the same Maintenance Agreement. In early 2010, the plant applied to have its operating license extended from 2030 to 2050.

In late 2000, about ten years after Seabrook Station began operating, AES Corporation, a large private developer of power projects, won state and federal approval for Grand Ridge, a state-of-the-art power plant in Londonderry, New Hampshire after a long and acrimonious regulatory fight with local opponents of the project. New rules of electric deregulation favored large, efficient, clean producers such as AES over the aging, smoky, oil/coal-fired competition. New pipelines had brought natural gas to New Hampshire for use as a clean-burning fuel.
The DICK Corporation, Construction Manager, on behalf of AES, entered into a PLA with the NHBCTC covering construction of the $340 million Granite Ridge 752-megawatt natural gas-fired, grey-water-cooled electric generating power plant in Londonderry, New Hampshire. The plant was completed ahead of schedule and within budget by local union workers who continue with on-going maintenance work to the present time.

Currently, Laidlaw Berlin Bio Power, LLC (Laidlaw), an affiliate of Laidlaw Energy Group, Inc. is in the pre-construction and design phases of the conversion and upgrading an existing former paper mill into a 65-megawatt biomass-energy power plant in Berlin, New Hampshire. The Northern region of New Hampshire, where the facility is situated, has experienced significant economic hardship over the last few years, due to the closure of several pulp and paper mills resulting in the loss of approximately 1,000 jobs. Construction is scheduled to begin in early 2011 with a two-year construction schedule. Laidlaw has executed a Memorandum of Understanding with NHBCTC to utilize a PLA on the Project, which will employ in excess of 200 Union workers drawn from the local New Hampshire resident work force.

The Berlin Biomass-Energy Project will be one of the largest and most environmentally sound biomass-energy facilities in the United States. The project is expected to utilize in excess of 700,000 tons of clean whole-tree wood chips per year in order to generate approximately 65 megawatts of electricity, thus generating substantial local economic activity for loggers, truckers and other local businesses. The fuel source for the Berlin Project will be whole tree wood chips and other low-grade wood, often referred to as “biomass materials,” which are byproducts of the local forest products industry and land management practices. Generally, whole tree chips are produced from trees unsuitable for use in lumber or paper mills, or from the tops and branches of trees harvested for lumber. Other clean wood products, such as wood residue from sawmills, is also suitable for fuel. Biomass fuel will be trucked to the facility together with rail access, which may offer opportunities for cheap fuel from other regions (e.g., storm debris from the Southern U.S.). As discussed above, the substantial number of pulp and paper mill closures in the region has resulted in the loss of many jobs and a substantial reduction of biomass consumption, thus having a significant adverse effect on the regional economy. The Berlin Project will help to reverse this trend by investing an estimated $10 million dollars per year into the regional economy for biomass fuel purchases.

2. Federal Bureau of Prisons

The Federal Bureau of Prisons (FBOP) is currently completing construction of a $238 million Federal Correctional Institution located in Berlin, New Hampshire (FCI Berlin). The medium-security institution, which is one of the largest public works projects in New Hampshire’s history, will house approximately 1,200 inmates in six housing units and include educational, vocational and prison industry spaces, along with healthcare, administrative and food services areas.

Under construction since early 2008, there have been no reports of significant delay or cost overruns. However, there have been continuous allegations of Davis-Bacon Act (DBA) violations, misclassification of workers and failure to employ local residents as promised prior to construction.

The DOL issues wage determinations under the Davis-Bacon Act (DBA) using available statistical data on prevailing wages and benefits paid in a specific locality. When the data does not contain sufficient
information to issue rates for a particular classification of worker needed in the performance of the contract. Davis-Bacon Act provisions contain a conformance procedure for the purpose of establishing an enforceable wage and benefit rate for the missing classification(s).

Contractors are responsible for determining the appropriate staffing necessary to perform the contract work. Contractors are also responsible for complying with the minimum wage and benefits requirements for each classification performing work on the contract. If a classification considered necessary by the contractor for performance of the work is not listed on the applicable wage determination, the contractor must initiate a request for approval of an additional classification along with the proposed wage and benefit rates for that classification.

In this instance, there was insufficient information in Coos County, New Hampshire, site of the FCI Berlin, to establish rates for the Ironworker or the Bricklayer. Instead of submitting the necessary data to the DOL to establish these rates, the contractor had the work performed by workers classified at the Laborers rate, which is the lowest DBA classification; or, workers were carried on the payroll as "independent contractors" and paid whatever rate could be negotiated with the labor brokers who provided them to the contractor, most often without insurance or fringe benefits of any kind.

Finally, in January 2010, after repeated and continuing efforts to halt the alleged DBA violations and abuses by the contractors on the FCI Berlin site, a "Request For Investigation" was filed by the International Representative IUBAC (Bricklayers) and the Business Agent/Industry Analyst, Ironworkers, Local 7, NHBCTC, to the DOL through the office of Congressman Paul Hodes, Second Congressional District, New Hampshire. To date, the DOL has issued a determination that the Ironworkers wage and benefit rates prevail in Coos County, New Hampshire. The contractor has appealed this determination while the investigation of remaining allegations continues.

This issue of misclassification of workers is a serious and long-standing problem in New Hampshire, and will be addressed at greater length later in this report.

3. Manchester Region Commercial/Municipal Development

Currently, Manchester’s largest development project in decades, Elliott at River’s Edge, (River’s Edge) is nearing completion. It is a $100 million healthcare campus, a key component of the city’s long-term economic development plan.

In 2004, Manchester lost hundreds of jobs when Tyson Food closed its large meat packing plant about a mile south of the city center. Aware that the site was a potential prime piece of riverfront real estate, the city purchased the site with a view toward future development. In early 2007, the city entered into an agreement with a local development firm, after receiving all necessary state and local approvals, for the purchase and sale and development of the site. Development criteria included requirements for mixed use development, green building construction, quality design and retention of public open space on the riverfront.

The site has been renamed “River’s Edge” and involved the clean-up (designated Brownfields) and development of the site into a 236,000-square-foot (four-story) urgent care facility (“green” building) for Elliott Hospital, an 11,000-square-foot (four-story) medical office building, a three-story apartment complex, a 13,000-square-foot retail/commercial building, and a four-acre river front park. Work on
the project is nearing completion and has proceeded without disruption, on time and within budget. Some 250 to 300 union and non-union workers have been employed on the project in approximately equal numbers throughout construction.

While the $100 million River's Edge Project is nearing completion, groundbreaking took place last month in Merrimack, New Hampshire, on a new $100 million project which will employ some 250 to 300 workers. The Merrimack Premium Outlet Project will include construction of approximately 560,000 square feet of retail outlet mall space, restaurants, courtyards, fountains, local tourism resources and infrastructure. Construction is scheduled to be completed in two years, and both union and non-union workers are expected to be employed in equal numbers with preference given to local residents.

Of particular interest and relevance to the Job Corp Center Project, is the planned Manchester Municipal Complex Project, which is similar in size and scope and will potentially be under construction during the same timeframe. The Municipal Complex is a $43.5 million project which will create a two-block, ten-acre campus with a new police headquarters and Department of Public Works. It will include six buildings comprising approximately 200,000 square feet. Because of federal funding involved, the contracts will be subject to Davis Bacon rate provisions; and, specifications will require first preference in hiring to local (New Hampshire) residents.

The first bid packages, based upon 30-percent drawings, resulted in responses from twelve bidders, all from the New England, New York area. Eight of those either withdrew or were disqualified for the second round of bidding on 90-percent drawings. The winning bidder was selected within the past week and is currently negotiating a “best and final” price with the city. The pool of bidders included both union and non-union contractors, and the successful bidder is a local shop contractor signed with two of the major trades involved in the construction. It is reasonable to assume, therefore, that at least 50 percent of the work will be performed by union labor.

D. Labor Law Abuse and Violations

As discussed briefly above regarding the Berlin Prison Project, misclassification of employees on public and private projects has been an ongoing and serious problem in New Hampshire for an extended period of time. Over the past several years, numerous and repeated efforts have been and are being made to correct the problem over strong opposition from those who benefit most from the status quo.

Misclassification takes different forms – (1) misclassifying workers as independent contractors, as opposed to employees, so that the “employer” can avoid legally required workers compensation and employment taxes and can avoid paying any benefit costs, and (2) misclassification of experienced, skilled craft workers into lower-wage or lower-risk craft categories in order to lower otherwise-required Davis-Bacon wages, benefit and tax costs and to decrease workers compensation costs.

In the 2005 New Hampshire Legislative Session, the, “Public Works Procurement Methods Study Committee” was formed, comprised of two Democrats and two Republicans and chaired by Representative Bernard L. Benn. Representative Benn spent several hours with the Hill team discussing the work of the Committee, key testimony received and legislative and executive actions taken to date.
The Committee’s final report states at the outset, "From the testimony, it quickly became clear that not all contractors play by the same rules, therefore creating an 'unlevel playing field' for responsible contractors bidding for State work. The testimony before the committee also made clear that various state entities procure construction contracts very differently and exercise differing degrees of oversight of their construction sites. It was learned that these problems affect both Union and Non-union contractors in basically the same way."

In the section listing its Key Findings, the report states, "The Committee approached its work with the basic premise that public entities have an obligation to get the best value for public construction spending, including ensuring that the people we pay to construct public buildings, play by the rules, and have the training and qualifications to do the work. However, what we heard is that there are not adequate procedures in place for making these assurances, particularly when it comes to evaluating or monitoring the many sub-contractors and sub-sub-contractors who are actually doing much of the work on public construction jobs."

A key finding that touches on all areas of committee inquiry and is important to all levels of government is that the public sector is not doing a good job of tracking, monitoring, and imposing accountability standards on the many levels of subcontractors working on taxpayer-funded construction projects. It appears, in some instances, that public overseers don't even know who is working on the construction site. This gap came up repeatedly and may be a systemic weakness that makes it easier for contractors to violate labor laws and cut other corners to the detriment of the public interest.

The committee recommended that it should make clear, through legislation or rule making, that it expects State agencies, the University System, and the Community-Technical College System to monitor and track every contractor and subcontractor, including every independent contractor, who is working on a public construction job. Otherwise, there is no way at the beginning of the construction process to certify that all layers of contractors are in compliance with labor, insurance, and tax laws and have the qualifications to do the work.

Extensive testimony about fraudulent contractor conduct in the labor, insurance/workers' compensation and tax arenas was provided to the New Hampshire Legislature's 2005-2006 Public Works Procurement Methods Study Committee as well as to several other Legislative Committees during multiple legislative sessions. Concern about these issues is bipartisan, spans multiple agencies, and has led to a number of bills and working groups focused on moving New Hampshire from the construction contractor "anything goes" atmosphere to an accountable, fairer system in which labor, tax and insurance law compliance is the norm. Key pieces of recent legislation to address worker misclassification and workers' compensation noncompliance, particularly in the construction sector, include:

- **HB 246 - 2005**, which established a Legislative Committee to study "the issues related to worker misclassification in New Hampshire, including potential problems with employers labeling their employees as 'independent contractors.' The Committee shall investigate the possible social and economic ramifications of such misclassification, including but not limited to impacts on state and federal revenues through the avoidance of tax obligations, and impacts on worker compensation and unemployment compensation coverage." While HB 246 was under
consideration, the Manchester Board of Mayor and Aldermen passed a resolution specifically urging the New Hampshire Legislature to pass this bill. The subsequent work of this Committee led to additional legislative efforts noted below.

- **SB 92 – 2007**, which tightened the definition of employee versus independent contractor to try to address the "loopholes" seemingly most used by contractors engaged in widespread worker misclassification.

- **HB 337 – 2007**, which increased the penalties for workers’ compensation fraud and noncompliance and established a "workers compensation fraud fund" to be used to support state investigatory and compliance activities.

- **HB 336 – 2007**, which requires employers to post, in a visible, accessible location within the workplace, information about the definitional distinction between an employee and an independent contractor.

- **HB 471 – 2007**, which requires all contractors on state transportation construction and public works projects to certify, prior to the start of a contractor’s or subcontractors work, that workers’ compensation coverage is in place, is current and covers the proper classifications for work being done, and further requires that all contractors certify that they were in compliance with the State’s workplace safety laws and training requirements. HB 471 also includes penalties for noncompliance and requires the affected State departments to make public the names of contractors who have been found in violation of these requirements.

- **HB 500 – 2008**, which was passed in recognition that the State was still faltering in its efforts to rein in rampant workers compensation and worker classification fraud and that some contractors simply factor the fines (if caught) into the cost of doing business or close shop under one DBA (doing business as) and open under another DBA and continue with their fraudulent, corner-cutting behavior. SB 500 increased the penalties for workers’ compensation or related insurance fraud and established a State-level Task Force or Worker Misclassification. This Task Force has undertaken significant investigatory research regarding the extent of the worker misclassification program, has issued a number of reports and recommendations, and has developed a website focused on accountability, compliance, and reporting. The Task Force’s extensive reports and findings can be found at www.nh.gov/nhworkers/index.htm. Unfortunately, even with the Task Force’s work, employee misclassification and the related workers’ compensation fraud remain significant problems within the New Hampshire construction arena, particularly among the numerous subcontractors and sub-subcontractors, etc. who actually perform a substantial amount of the work on major projects. New Hampshire’s modest agency staffing levels mean that investigation, compliance, and prosecution in this arena remain a challenge. Further, for federal projects outside the bounds of state laws pertaining to state funded projects, misclassification remains a significant problem (Berlin Prison Project).

- **Governor’s Executive Order on Employee Misclassification**: Recognizing the continuing misclassification/workers’ compensation fraud problem in New Hampshire, on September 3, 2010, Governor John Lynch issued an Executive Order 2010-3 “Directing the Coordination of Agency Action on Employee Misclassification and Establishing a Joint Agency Task Force
on Employee Misclassification enforcement:” (to be chaired by the Commissioner of Labor). Executive Orders are issued rarely in New Hampshire. Therefore, the existence of this Executive Order attests to the fact that this issue remains a serious problem in New Hampshire, most particularly in the construction sector, and the “anything goes” atmosphere has not yet been fully addressed. An Op-Ed article by Labor Commissioner George Copadis discussing the issues in detail appeared in multiple New Hampshire newspapers to coincide with the signing of this Executive Order. Executive Order 2010-3 and Commissioner Copadis Op-Ed article are attached as Appendix C.

The Op-Ed article states that adverse results of misclassification of employees are four-fold, affecting owners, contractors, employees and the government (state and/or federal):

- Owners are deprived of the skilled workers for which they have contracted.
- Contractors that are law-abiding and follow the rules are at a competitive disadvantage when bidding.
- Employees are deprived of significant benefits and insurance to which they are legally entitled.
- Government entities are deprived of the tax revenue from the higher wages which would be paid as well as the decreased or absence of contributions to workers compensation, health and insurance funds.

In interviews with Governor Lynch and Commissioner Copadis, each asked independently whether a PLA would resolve the misclassification issues and would be applicable to both union and non-union contractors. The answer was affirmative by both parties on both issues with respect to specific projects utilizing PLAs.

E. Summary Comments

The statistic that open shop contracting encompasses approximately 90 percent statewide and 80 percent of the workers in Manchester is misleading. It is reasonable to assume that in larger capital projects there will be approximately 50 percent union labor whether or not there is a PLA. In the area of open shop contracting, there appears to be rampant misclassification of employees and worker’s compensation noncompliance on both public and private projects. New Hampshire has been trying to continuing these problems for several years and through legislation and the recent Governor’s Executive Order 2010-3; but, has met strong opposition and continuing non-compliance from those that prefer the status quo.

The DOL has designated the Project as a total SBE total set-aside. Based on the Small Business Administration Dynamic Business Search Database, there is one SBE Contractor that has the bonding capacity to submit a bid for the project; however, the contractor stated that it does not plan to submit a bid on the project.
V. Current Collective Bargaining Agreements

In the absence of a PLA, substantial amounts of large capital projects (based upon historical bidding and contract award data) would likely be performed by union contractors, and thus performed under union contracts. Specifically, local labor agreements with the trades listed below would be involved. The collective bargaining agreement (CBA) of each of these local unions was reviewed and analyzed as part of this study and is summarized in pertinent part in Appendix B.

1. Bricklayers/Masons / Tile Marble & Terrazzo (BAC Local 3)
2. Carpenters (Local 118 & 1996)
3. Cement Masons / Plasterers (Local 534)
4. Electricians (Local 490)
5. Elevator Constructors (Local 4)
6. Heat & Frost Insulators & Asbestos Workers (Local 6)
7. Ironworkers Structural (Local 7)
8. Laborers (Local 668)
9. Operating Engineers (Local 98, 98A, 98B, 98R)
10. Painters / Glaziers (DC No. 35)
11. Plumbers & Steamfitters (Local 131)
12. Road Sprinkler Fitters (Local 669)
13. Roofers (Local 33)
14. Sheetmetal Workers (Local 17-NH)
15. Teamsters (Local 633)

The significant and pertinent provisions of these local agreements were analyzed for possible variances in their terms and conditions. The first area of concern is that fourteen (14) of the fifteen (15) agreements will expire at least once during project construction. Each of these expirations presents a risk, to both union and non-union contractors that use union building trades, that any new negotiations between the Unions and the local Contractor Associations can break down. Workers covered by those agreements could then lawfully strike over any number of issues, including many that would have nothing to do with the New Hampshire Job Corps Center construction.

 Strikes not only directly drive up construction costs, but they also disrupt construction progress and result in completion delays. Any delay in construction completion also means delay in occupying or re-occupying the building for its intended use. A PLA’s comprehensive no-strike clause virtually eliminates the risk of potential strike activity as a cause of project delay. Should a strike occur upon the expiration of a local Collective Bargaining Agreement (CBA), work on the project covered by a PLA will go forward.

Following are examples of some of the main differences among the provisions of the respective CBAs that will be standardized under a PLA:

**Hours of Work**

In most agreements, starting and quitting times are identified with some flexibility as to the start times. Union approval is required for changes and premium pay for hours worked before and/or after. Under the existing local agreements, the contractor has limited flexibility in varying the scheduling of working hours without premium payments and prior approval from the unions. A PLA will provide for
a uniform 40-hour week at straight time with a two-hour flexible “window” at the beginning and/or end of the workday, thus assuring that all required trades for specific work items will start and stop at the same times, or as directed by the Contractor.

**Holidays**

Holidays range from as many as ten (10) possible holidays annually to a minimum of six (6) recognized holidays. Whether holidays are paid and the rate of premium pay varies among the trades. A PLA will provide for standardized holidays (six to eight) with payment for work on those days as set forth in the local agreements.

**Jurisdictional Disputes**

Procedures for dealing with jurisdictional work assignments and consequential disputes are not uniform or consistent. Agreements vary with regard to costs, binding effect of award, and work disruption pending decisions. The PLA provides for a uniform jurisdictional dispute resolution mechanism.

Most importantly, there is no existing method, means, or procedure to ensure that there will be no strike, lockout, work stoppage or other work disruption pending resolution of such a dispute. The PLA provides for protection against work disruption during jurisdictional disputes.

**Grievances/Arbitration**

Though local labor-management grievance procedures exist, they vary among specific crafts and contractor associations. No standardized, binding forum exists with authority over all respective parties. A PLA provides for a uniform dispute resolution procedure.

**Management Rights**

Many of the existing agreements do not contain a “Management Rights” clause. Those that exist are often ambiguous or inadequate to provide the contractor with the authority and/or flexibility required for necessary control and management of the project work. A PLA will contain a broad management rights clause giving the contractor control of the schedule and manning as well as “means and methods.”
VI. Conclusions and Recommendations

A PLA is considered viable and appropriate for the New Hampshire Job Corps Center Project subject to the removal of the small business set-aside procurement requirement. The existing pool of potential bidders in the New England/New York area is limited to six open shop contractors. It is unrealistic to assume that all or any of those would bid on a project requiring a PLA; whereas, a solicitation open to all bidders, similar to the Manchester Municipal Complex Project, could be expected to attract a similar response from a similar number of bidders (12), both union and non-union, with a PLA applicable equally to both.

In determining the viability of a PLA for the Project within the guidelines and criteria set forth in the President's Executive Order 13502 and implementing FAR provisions, the following conclusions were reached:

1. By definition, the Project is a “large scale construction project,” since the cost to the Government is in excess of $25 million.

2. A PLA will advance the Federal Government's interest in achieving economy and efficiency in the project through standardization of work rules; a guaranteed no-strike, lock-out, or work disruption provision; a guaranteed continuous supply of skilled, experienced labor; and, a comprehensive “Management Rights” provision. Based upon the area workforce composition and the recent history of capital construction projects in the area, it is reasonable to assume that, with or without a PLA, the Project workforce will include at least fifty (50) percent union workers. A PLA will standardize the work rules of that fifty (50) percent which would otherwise be subject to individual trade CBAs while, at the same time, covering the remaining fifty (50) percent of the workforce, giving the contractor unfettered control of manning, scheduling and "means and methods" of construction.

3. A PLA will ensure compliance with laws and regulations governing safety and health, equal employment opportunity and labor employment standards through specific provisions addressing each of those areas as well as through the Labor Management Committee (LMC) comprised of owner, contractor and union members. The LMC would meet regularly throughout construction and address all issues of discrimination in referrals and/or hiring practices, safety, health and dispute resolution. The LMC ensures strict compliance with all provisions of the PLA.

4. A PLA will not only be consistent with the law; but, it will ensure that all applicable laws (Federal, state and municipal), are observed and obeyed, particularly those laws dealing with proper classification of workers and payment of both wages and benefits.

5. The Project will require a General Contractor and an estimated six or seven sub contractors, e.g. electrical, plumbing, steel, masonry, and site work. There will also be some fifteen (15) trades involved in the construction (see Section V).

6. There is currently no shortage of skilled labor in the region and none is expected. If, however, a shortage in any trade should occur because of other ongoing projects in the area drawing upon the
same labor pool, the Building Trades have the ability to draw upon skilled workers from affiliated union locals outside the area, in any state.

7. The Project should be completed within the twenty-month schedule given no unforeseen, extraordinary event(s).

8. PLAs have not been used on comparable projects undertaken by Federal, state, or municipal or private entities in the geographic area. PLAs or similar labor agreements have been utilized on large industrial facilities, e.g., power plants requiring many highly skilled and specialized craftsmen such as certified welders and boilermakers. Numerous PLAs, both public and private, have been utilized in the Boston and surrounding areas. Though only about 50 miles distant, that work force or labor pool is much more highly unionized than New Hampshire.

9. A PLA will most definitely promote the agency’s long-term program interests, such as facilitating the training of a skilled workforce to meet the agency’s future construction needs. The purpose of the Job Corps Center is to train individuals to enter the workforce. Trades all have apprentice programs with the same purpose and with existing training facilities and instructors. These can all be made available to the agency; and, in some cases have already been offered.

10. A PLA will provide continuous maintenance and monitoring of certified payrolls as well as a method for immediate sanctions for violations. Further, a PLA will advance the public policy objectives of Federal state and local entities’ goals with respect to minority, women, small business, and residents’ participation in the work force. In order for a PLA to be a true “pre hire” agreement, its terms and conditions must be known by the parties before the bidding process and award of a contract. 48 C.F.R., Chapter 1, Part 22.504 (c); provides:

   (c) Terms and conditions. As appropriate to advance economy and efficiency in the procurement, an agency may specify the terms and conditions of the project labor agreement in the solicitation and require the successful offeror to become a party to a project labor agreement containing these terms and conditions as a condition of receiving a contract award. An agency may seek the views of, confer with, and exchange information with prospective bidders and union representatives as part of the agency’s effort to identify appropriate terms and conditions of a project labor agreement for a particular construction project and facilitate agreement on those terms and conditions.

A PLA will:

- Level the “playing field” for all bidders and successful contractors.
- Ensure tracking, monitoring and imposing accountability standards on every level of contractor (including independent contractors).
- Ensure compliance with labor, tax and insurance laws.

PLA work rules are not onerous, and apply equally to all contractors union and non-union.
Based upon the foregoing, it is recommended that:

1. The “Small Business Set Aside” requirement is rescinded to provide for a reasonable bidder pool.


3. The executed PLA be included in the bid specifications as part of the solicitation for construction of the New Hampshire Job Corps Center.
Appendices

A. President Obama's Executive Order 13502

B. Analysis of Current Collective Bargaining Agreements

C. Governor Lynch's Executive Order 2010-3;

   NH Commissioner of Labor Op-Ed Article, dated September 4, 2010
Executive Order 13502 of February 6, 2009

Use of Project Labor Agreements for Federal Construction Projects

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 et seq., and in order to promote the efficient administration and completion of Federal construction projects, it is hereby ordered that:

Section 1. Policy. (a) Large-scale construction projects pose special challenges to efficient and timely procurement by the Federal Government. Construction employers typically do not have a permanent workforce, which makes it difficult for them to predict labor costs when bidding on contracts and to ensure a steady supply of labor on contracts being performed. Challenges also arise due to the fact that construction projects typically involve multiple employers at a single location. A labor dispute involving one employer can delay the entire project. A lack of coordination among various employers, or uncertainty about the terms and conditions of employment of various groups of workers, can create frictions and disputes in the absence of an agreed-upon resolution mechanism. These problems threaten the efficient and timely completion of construction projects undertaken by Federal contractors. On larger projects, which are generally more complex and of longer duration, these problems tend to be more pronounced.

(b) The use of a project labor agreement may prevent these problems from developing by providing structure and stability to large-scale construction projects, thereby promoting the efficient and expeditious completion of Federal construction contracts. Accordingly, it is the policy of the Federal Government to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement.

Sec. 2. Definitions.

(a) The term “labor organization” as used in this order means a labor organization as defined in 29 U.S.C. 152(5).

(b) The term “construction” as used in this order means construction, rehabilitation, alteration, conversion, extension, repair, or improvement of buildings, highways, or other real property.

(c) The term “large-scale construction project” as used in this order means a construction project where the total cost to the Federal Government is $25 million or more.

(d) The term “executive agency” as used in this order has the same meaning as in 5 U.S.C. 105, but excludes the Government Accountability Office.

(e) The term “project labor agreement” as used in this order means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in §158(f).

Sec. 3. (a) In awarding any contract in connection with a large-scale construction project, or obligating funds pursuant to such a contract, executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where use of such an agreement will (i)
advance the Federal Government’s interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters, and (ii) be consistent with law.

(b) If an executive agency determines under subsection (a) that the use of a project labor agreement will satisfy the criteria in clauses (i) and (ii) of that subsection, the agency may, if appropriate, require that every contractor or subcontractor on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more appropriate labor organizations.

Sec. 4. Any project labor agreement reached pursuant to this order shall:
(a) bind all contractors and subcontractors on the Construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;
(b) allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
(c) contain guarantees against strikes, lockouts, and similar job disruptions;
(d) set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the project labor agreement;
(e) provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
(f) fully conform to all statutes, regulations, and Executive Orders.

Sec. 5. This order does not require an executive agency to use a project labor agreement on any construction project, nor does it preclude the use of a project labor agreement in circumstances not covered by this order, including leasehold arrangements and projects receiving Federal financial assistance. This order also does not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

Sec. 6. Within 120 days of the date of this order, the Federal Acquisition Regulatory Council (FAR Council), to the extent permitted by law, shall take whatever action is required to amend the Federal Acquisition Regulation to implement the provisions of this order.

Sec. 7. The Director of OMB, in consultation with the Secretary of Labor and with other officials as appropriate, shall provide the President within 180 days of this order, recommendations about whether broader use of project labor agreements, with respect to both construction projects undertaken under Federal contracts and construction projects receiving Federal financial assistance, would help to promote the economical, efficient, and timely completion of such projects.

Sec. 8. Revocation of Prior Orders, Rules, and Regulations. Executive Order 13202 of February 17, 2001, and Executive Order 13208 of April 6, 2001, are revoked. The heads of executive agencies shall, to the extent permitted by law, revoke expeditiously any orders, rules, or regulations implementing Executive Orders 13202 and 13208.

Sec. 9. Severability. If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Sec. 10. General. (a) Nothing in this order shall be construed to impair or otherwise affect:
(i) authority granted by law to an executive department, agency, or the head thereof; or
(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 11. Effective Date. This order shall be effective immediately and shall apply to all solicitations for contracts issued on or after the effective date of the action taken by the FAR Council under section 6 of this order.

THE WHITE HOUSE,
February 6, 2009.
<table>
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<th>Agreement Provisions</th>
<th>Bricklayers &amp; Stone Masons (Building)</th>
<th>Carpenters (Building)</th>
<th>Electricians (Building)</th>
<th>Electricians (Teledata)</th>
<th>Elevator Constructors</th>
<th>Glaziers</th>
<th>Insulators &amp; Asbestos Workers</th>
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<td>R. Benefits</td>
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Appendix B
New Hampshire Job Corps
10/28/2010
## PLA Cost Benefit Analysis
### Analysis of Current Collective Bargaining Agreements

<table>
<thead>
<tr>
<th>Agreement Provisions</th>
<th>Laborers</th>
<th>Operating Engineers Building</th>
<th>Painters (incl. Drywall, Finishing &amp; Tapers)</th>
<th>Plasterers &amp; Cement Masons</th>
<th>Plumbers &amp; Pipefitters</th>
<th>Road Sprinkler Fitters</th>
<th>Roofers</th>
<th>Sheetmetal Workers</th>
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<tbody>
<tr>
<td></td>
<td>Local No. 489</td>
<td>Local No. 490, 491, 492, 493</td>
<td>Local No. 490, 491, 492, 493</td>
<td>Local No. 490</td>
<td>Local No. 491, 492</td>
<td>Local No. 491, 492</td>
<td>Local No. 491</td>
<td>Local No. 491</td>
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<td>I. Time</td>
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<td>CBA</td>
<td>CBA</td>
<td>CBA</td>
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<tr>
<td>A. Regular Work Week</td>
<td>40 hrs Mon-Fri (inclusive)</td>
<td>40 hrs Mon-Fri (inclusive)</td>
<td>40 hrs Mon-Fri (inclusive)</td>
<td>40 hrs Mon-Fri (inclusive)</td>
<td>40 hrs Mon-Fri (inclusive)</td>
<td>40 hrs Mon-Fri (inclusive)</td>
<td>40 hrs Mon-Fri (inclusive)</td>
<td>40 hrs Mon-Fri (inclusive)</td>
</tr>
<tr>
<td></td>
<td>8 hrs between 8:00 AM to 4:30 PM w/ optional flex start time between 6:00 AM to 2:30 PM w/ optional 6-10 PM &amp; optional 4-10 PM</td>
<td>8 hrs between 8:00 AM to 4:30 PM w/ optional flex start time between 7:00 AM to 3:30 PM w/ optional 7:00 AM to 3:30 PM</td>
<td>8 hrs between 8:00 AM to 4:30 PM w/ optional flex start time between 7:00 AM to 3:30 PM w/ optional 7:00 AM to 3:30 PM</td>
<td>8 hrs between 8:00 AM to 4:30 PM w/ optional flex start time between 7:00 AM to 3:30 PM w/ optional 7:00 AM to 3:30 PM</td>
<td>8 hrs between 8:00 AM to 4:30 PM w/ optional flex start time between 7:00 AM to 3:30 PM w/ optional 7:00 AM to 3:30 PM</td>
<td>8 hrs between 8:00 AM to 4:30 PM w/ optional flex start time between 7:00 AM to 3:30 PM w/ optional 7:00 AM to 3:30 PM</td>
<td>8 hrs between 8:00 AM to 4:30 PM w/ optional flex start time between 7:00 AM to 3:30 PM w/ optional 7:00 AM to 3:30 PM</td>
<td>8 hrs between 8:00 AM to 4:30 PM w/ optional flex start time between 7:00 AM to 3:30 PM w/ optional 7:00 AM to 3:30 PM</td>
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<td>B. Regular Work Day</td>
<td>1.5x</td>
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<td>1.5x</td>
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<td>1.5x</td>
<td>1.5x</td>
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<td>C. Overtime</td>
<td>CBA</td>
<td>CBA</td>
<td>CBA</td>
<td>CBA</td>
<td>CBA</td>
<td>CBA</td>
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<tr>
<td>D. Holidays</td>
<td>2.0x</td>
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<td>2.0x</td>
<td>2.0x</td>
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<td>E. Miscellaneous</td>
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<td>II. Shift Work</td>
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<tr>
<td>A. 1st Shift (Day)</td>
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<td>8 hrs @ 1.0X (0%)</td>
<td>8 hrs @ 1.0X (0%)</td>
<td>8 hrs @ 1.0X (0%)</td>
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<td>8 hrs @ 1.0X (0%)</td>
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<tr>
<td>B. 2nd Shift (Swing)</td>
<td>8 hrs for 7:30 am work (%)</td>
<td>8 hrs for 7:30 am work (%)</td>
<td>8 hrs for 7:30 am work (%)</td>
<td>8 hrs for 7:30 am work (%)</td>
<td>8 hrs for 7:30 am work (%)</td>
<td>8 hrs for 7:30 am work (%)</td>
<td>8 hrs for 7:30 am work (%)</td>
<td>8 hrs for 7:30 am work (%)</td>
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<tr>
<td>C. 3rd Shift (Graveyard)</td>
<td>8 hrs for 7:00 am work (14%)</td>
<td>8 hrs for 7:00 am work (14%)</td>
<td>8 hrs for 7:00 am work (14%)</td>
<td>8 hrs for 7:00 am work (14%)</td>
<td>8 hrs for 7:00 am work (14%)</td>
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<td>8 hrs for 7:00 am work (14%)</td>
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<td>D. Irregular Shift</td>
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<td>8 hrs premium for 7 to 8 hours non-regular premium (15%)</td>
<td>8 hrs premium for 7 to 8 hours non-regular premium (15%)</td>
<td>8 hrs premium for 7 to 8 hours non-regular premium (15%)</td>
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<td>8 hrs premium for 7 to 8 hours non-regular premium (15%)</td>
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<td>III. Holidays</td>
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<td>Total = 8 days</td>
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<td>B. Vacation</td>
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<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
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<tr>
<td>C. Jury Duty</td>
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<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
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<tr>
<td>D. Employee Jury</td>
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<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
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<td>1.5x (15%)</td>
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<tr>
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<td>Total = 8 days</td>
<td>Total = 8 days</td>
<td>Total = 8 days</td>
<td>Total = 8 days</td>
<td>Total = 8 days</td>
<td>Total = 8 days</td>
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<tr>
<td>B. Jury Duty</td>
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<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
</tr>
<tr>
<td>C. Employee Jury</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
<td>1.5x (15%)</td>
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<td>V. Non-Supervisory</td>
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<td>A. Foreman</td>
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<td>CBA</td>
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<td>B. Superintendent</td>
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<td>A. Wages</td>
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*Hill International*

Page 2 of 3

Appendix B

New Hampshire Job Corps Center

10/28/2010
## PLA Cost Benefit Analysis
### Analysis of Current Collective Bargaining Agreements

<table>
<thead>
<tr>
<th>Agreement Provisions</th>
<th>Teamsters (Flat Mix Drivers)</th>
<th>Tile</th>
<th>Stone, Marble, Mosaic &amp; Terrazo</th>
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<td>CBA 4/30/2016</td>
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<tr>
<td>A. Regular Work Week</td>
<td>40 hrs Mon - Fri (inclusive)</td>
<td>40 hrs Mon - Fri (inclusive)</td>
<td>40 hrs Mon - Fri (inclusive)</td>
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<tr>
<td>B. Regular Work Day</td>
<td>8 hrs w/ flex start times b/t 7:00 AM &amp; 8:00 AM at a 9:00 AM start time or December 15 through March 15</td>
<td>8 hrs w/ flex start times b/t 7:00 AM &amp; 8:00 AM at a 9:00 AM start time or December 15 through March 15</td>
<td>8 hrs w/ flex start times b/t 7:00 AM &amp; 8:00 AM at a 9:00 AM start time or December 15 through March 15</td>
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<tr>
<td>C. Overtime</td>
<td>CBA</td>
<td>CBA</td>
<td>CBA</td>
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<tr>
<td>1. Monday - Friday</td>
<td>1.5x above 6 hrs, 2.5x above 10 hrs</td>
<td>1.5x above 6 hrs, 2.5x above 10 hrs</td>
<td>1.5x above 6 hrs, 2.5x above 10 hrs</td>
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<tr>
<td>2. Saturdays</td>
<td>1.5x</td>
<td>1.5x</td>
<td>1.5x</td>
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<td>3. Sunday</td>
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<td>D. Holidays</td>
<td>8 hrs @ 1.5x + 1.5x actual hours worked (100%)</td>
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<td>2.0x</td>
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<td>E. Miscellaneous</td>
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<td>III. S/NR Work</td>
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<td>A. 1st Shift (Day)</td>
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<td>6 hrs @ 1.0x (5%)</td>
<td>6 hrs @ 1.0x (5%)</td>
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<tr>
<td>B. 2nd Shift (Swing)</td>
<td>8 hrs @ 2.0x + 2.5x @ 10 hrs</td>
<td>8 hrs for 7.5 hrs work (15%)</td>
<td>8 hrs for 7.5 hrs work (15%)</td>
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<tr>
<td>C. 3rd Shift (Graveyard)</td>
<td>8 hrs for 7.0 hrs work (15%)</td>
<td>8 hrs for 7.0 hrs work (15%)</td>
<td>8 hrs for 7.0 hrs work (15%)</td>
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<tr>
<td>D. Irregular Shift</td>
<td>Start at 12:00 noon &amp; 1.5x above 4 hrs</td>
<td>Work before or after normal time is @ 1.5x</td>
<td>Work before or after normal time is @ 1.5x</td>
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<td>IV. Holidays</td>
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<td>Recognized Holidays</td>
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<td>V. Apprentices</td>
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<td>Ratio App/ Journeymen</td>
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<td>Year 1 - Journeyman</td>
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<td>1.3 (17%)</td>
<td>1.3 (17%)</td>
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<tr>
<td>Year 2 - Journeyman</td>
<td>1.5 (18%)</td>
<td>1.5 (18%)</td>
<td>1.5 (18%)</td>
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<td>W. Journeyman Rate</td>
<td>CBA Health &amp; Welfare + Person + Annuity Rate only</td>
<td>CBA Health &amp; Welfare + Person + Annuity Rate only</td>
<td>CBA Health &amp; Welfare + Person + Annuity Rate only</td>
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<tr>
<td>Specific Category</td>
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<td>A. Wages</td>
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<td>$39.31</td>
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<td>B. Benefits</td>
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<td>$44.31</td>
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<tr>
<td>C. Total</td>
<td>$16.80</td>
<td>$44.31</td>
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State of New Hampshire
By His Excellency
John H. Lynch, Governor

Executive Order 2010-3

AN ORDER DIRECTING THE COORDINATION OF AGENCY ACTION
ON EMPLOYEE MISCLASSIFICATION
AND
ESTABLISHING A JOINT AGENCY TASK FORCE ON EMPLOYEE MISCLASSIFICATION
ENFORCEMENT

WHEREAS, New Hampshire law provides that all workers are considered employees and requires their employers to comply with all labor, employment, tax, insurance and other regulatory requirements unless the workers demonstrate that they meet the criteria that allows them to be lawfully classified as an ‘independent contractor’;

WHEREAS, the health of the New Hampshire economy, its workers and its businesses is weakened when employers misclassify individuals they hire as independent contractors when those employees should legally be classified as employees;

WHEREAS, when an employee is misclassified as an independent contractor, the employer potentially violates a number of important legal obligations under federal and state labor, employment and tax laws;

WHEREAS, employee misclassification significantly harms New Hampshire workers who are deprived of their important legal rights and protections;

WHEREAS, employee misclassification is fundamentally unfair to the majority of New Hampshire job providers who abide by legal requirements on job classification but are placed at a competitive disadvantage compared to those who avoid their legal obligations;

WHEREAS, employee misclassification also harms New Hampshire taxpayers because employers who misclassify employees illegally avoid financial obligations to the State of New Hampshire; and

WHEREAS, the New Hampshire laws relating to employee misclassification would benefit from coordination of state agency action, and

WHEREAS, the Task Force to Study Employee Misclassification established by the Legislature in 2008 worked diligently over the past two years to examine and address the issue of employee misclassification and has acknowledged the benefit of a coordinated approach to address employee misclassification,

NOW, THEREFORE, I, JOHN H. LYNCH, GOVERNOR OF THE STATE OF NEW HAMPSHIRE, by virtue of the authority vested in me by Part II, Article 41 of the New Hampshire Constitution, do hereby order that:
State departments that presently investigate and enforce employee misclassification under their own statutory or administrative authority shall pool, focus and coordinate their resources under current law to identify, investigate and enforce cases of employee misclassification through joint agency teams, as appropriate, and develop strategies to eliminate employee misclassification.

The Department of Labor shall be the lead agency for the coordination of state agency efforts to identify and investigate employee misclassification. The Departments of Administrative Services, Employment Security, Insurance, Information Technology, Justice, Revenue Administration, Transportation and Environmental Services shall work with the Department of Labor in identifying, investigating and enforcing employee misclassification.

The Department of Labor shall coordinate state agency action to establish a system for the sharing of information of significant cases of suspected employee misclassification among appropriate state agencies and coordinate the development of protocols for joint investigation and enforcement of violations, either through state administrative action or through referral to appropriate local, state and federal law enforcement agencies.

There is also established a Joint Agency Task Force on Employee Misclassification Enforcement ("Task Force").

The Task Force shall consist of the following members, who shall be appointed by the Governor and shall serve at the pleasure of the Governor:

a. The Commissioner of Labor or designee
b. The Commissioner of Insurance or designee
c. The Commissioner of Employment Security or designee
d. The Commissioner of Revenue Administration or designee
e. The Commissioner of Administrative Services or designee
f. The Commissioner of Transportation or designee
g. The Commissioner of Environmental Services or designee
h. The Commissioner of Information Technology or designee
i. The Attorney General or designee.

The Governor shall select a chairman of the Task Force from among its members. The Task Force shall meet at the call of the chairman.

The Department of Labor shall serve as the lead agency in assisting the Task Force in its duties, providing staff assistance, research and preparation of reports.

The Task Force shall undertake and perform the following duties:

a. Examine and evaluate existing employee misclassification enforcement mechanisms in New Hampshire and other jurisdictions and make recommendations for more effective enforcement mechanisms. The Task Force should examine and evaluate existing employee misclassification enforcement mechanisms arising under minimum wage, employment security, workers disability, and tax laws.

b. Identify barriers to information sharing under current state law and recommend to the Governor proposed executive or legislative actions needed to overcome the barriers.
c. Work cooperatively with business, labor, and community groups interested in reducing employee misclassification, including but not limited to both of the following:
   (i) Seeking ways to prevent employee misclassification, such as through the dissemination of educational materials regarding the legal differences between independent contractors and employees.
   (ii) Enhancing mechanisms for identifying and reporting instances of employee misclassification.

d. Increase public awareness of the illegal nature of and harms inflicted by employee misclassification.

e. Encourage businesses and individuals to identify possible violators through increased use of the Misclassification 'Tip-Sheet' website (www.nh.gov/nhworkers) that allows reporting of possible violations through a secure mechanism.

9. The Task Force shall issue a public report to the Governor on September 1 of each year, which shall detail the work of the Task Force, identify any administrative or legal barriers that might be impeding more effective enforcement of employee misclassification, make recommendations for legislative or regulatory measures to improve employee misclassification enforcement and identify successful preventative mechanisms for reducing employee misclassification. Copies of the annual report shall be provided to the Speaker of the House of Representatives, the President of the Senate, and the State Librarian.

10. All state agencies and departments shall make reasonable efforts to cooperate with the Task Force and to furnish such information and assistance as the Task Force reasonably deems necessary to accomplish its purposes.

11. The Task Force is authorized to receive monetary and other assistance in furtherance of its duties and functions upon the approval of the Governor and Council and in accordance with New Hampshire law. The Department of Labor is designated as the agency to bring forward any item on behalf of the Task Force for approval by the Governor and Council.

12. Nothing in this Executive Order shall be construed to require any action inconsistent with any applicable state or federal law.

13. This Executive Order shall continue in effect until amended, superseded or revoked by subsequent Executive Order.

Given under my hand and seal at the Executive Chambers in Concord, this 3rd day of September, in the year of our Lord two thousand and ten.

[Signature]
Governor of New Hampshire
Misclassifying employees as independent contractors is a fraud that hurts us all

The misclassification of employees as independent contractors is a violation of New Hampshire law and it fundamentally undermines New Hampshire's strong business climate. By driving higher unemployment and workers' compensation costs for the overwhelming majority of businesses that follow the law, misclassification creates a competitive disadvantage for these law-abiding businesses. More importantly, it leaves employees without important benefits, such as workers' compensation, which they are entitled to receive under the law.

Plain and simple, the misclassification of employees is fraud, and it is illegal. By reducing the instances of misclassification we will help to level the playing field for businesses that play by the rules. Those who misclassify workers do not pay their share of unemployment taxes, which means businesses that follow the law and the taxpayers are subsidizing those who are perpetrating this fraud.

Misclassification deals primarily with hiring practices used by some employers to avoid obligations they have under the law. These obligations include providing workers' compensation coverage, unemployment coverage and other taxes, withholding and benefits for their workers. This serves to weaken our economy and creates a negative business climate.

Under New Hampshire law, all employees must be covered by their employer under a workers' compensation policy. The only way to qualify as an independent contractor for workers' compensation purposes is to meet all 11 statutory criteria (N.H. RSA 581-A).

There are workers in New Hampshire who truly operate as independent contractors. But there are also workers who simply call themselves independent contractors in order to gain an unfair competitive advantage.

Workers' compensation coverage can be a costly part of doing business, especially in some industries and for certain occupations. It has been estimated that misclassification decreases payroll costs by as much as 30 percent for those companies that are not paying the law. If an individual or business bidding on a job doesn't pay for workers' compensation insurance due to misclassification, this reduces their cost of doing business and may allow them to artificially undercut the price of their competitors who are acting lawfully.

Then there are employers who seek to avoid their obligation to provide workers' compensation by requiring their workers to classify themselves as independent contractors, even though they do not qualify as such under the law. In these cases, the employer will pay the worker, but the employer does not provide benefits to the worker, including mandated workers' compensation coverage. When this happens, it leaves the worker unprotected.

The Department of Labor holds a hearing to determine whether the worker qualifies as an independent contractor and/or whether they are due workers' compensation benefits. Companies that are found to have not provided proper workers' compensation coverage for their employees may be assessed a civil penalty of up to $2,500 along with being assessed a civil penalty of $10,000 per employee for each day of noncompliance. These employers may also face criminal prosecution.

New Hampshire, along with many other states, is working hard to find solutions to the problems of misclassification. Legislation in 2008 established the Task Force to Study Employee Misclassification, which has been working at better defining, understanding and investigating the issues of misclassification and making recommendations as to how to deal with them.

As a natural outgrowth of the Task Force's work, Gov. John Lynch on Friday issued an Executive Order creating the Joint Task Force on Employee Misclassification Enforcement. The Task Force will ensure cooperation and coordination among the agencies that investigate instances of misclassification, including the departments of Labor, Insurance, Employment Security and Revenue Administration. This coordinated effort will help us to better enforce the law and expose those who unlawfully classify workers as independent contractors.

In addition, the State has put a website in place — www.nh.gov/ workers — where anyone can report suspected misclassification or worker's compensation related issues in a secure environment. The majority of companies in our state work to provide a safe, safe working environment for their employees, which helps to strengthen our economy. But those who knowingly break the law in order to gain an unfair competitive edge are those who are engaging in this fraud will be discovered and they will be punished to the fullest extent of the law.

By working together with the business community and our various State partners to address this issue, we are demonstrating our commitment to ensuring that New Hampshire remains a great state to start and grow a business — where both employers and employees are treated with fairness and respect.

(John N. Capadis is commissioner of the N.H. Department of Labor, Deborah L. Stone is chair of N.H.'s Task Force to Study Employee Misclassification.)