LABOR-MANAGEMENT RELATIONS

Construction Agreement at DOE's Idaho Laboratory Needs Reassessing
Background

Most of DOE's research and development activities are carried out by contractors at government-owned facilities located throughout the country. INEL is one of these facilities. It consists of nuclear research facilities, spent waste recovery plants, and other facilities located on more than 899 square miles in southeastern Idaho.

Three DOE organizations fund research and development activities at INEL. They include the Idaho Operations Office (DOE-ID), the Pittsburgh Naval Reactors Office (Naval Reactors Facility), and the Chicago Operations Office (Argonne National Laboratory-West). The activities of these organizations at INEL require construction either to build new facilities or to modify existing facilities to meet the changing needs of the government. Construction at INEL for DOE-ID and the Pittsburgh Naval Reactors Office is managed by construction managers, who award subcontracts for the construction of facilities. (See app. 1)

Between November 1977 and October 1978, INEL experienced a number of work stoppages that resulted in about 7,000 staff days of lost work on construction projects. Beginning in 1980, in an effort to bring about labor stability at INEL, unions and union contractors initiated efforts to develop a Site Stabilization Agreement. By November 1984, the unions and union contractors signed the Agreement. It contains a no-strikes/no-lockouts clause and establishes wages, fringe benefits, and working conditions for construction work at INEL.
The Agreement applies specifically to all construction at INEL that is funded by DOE-ID. All union contractors must sign the Agreement, and, because the construction manager has signed, all nonunion contractors must also sign the Agreement.

The Agreement applies differently to the other two organizations funding work at INEL. The Pittsburgh Naval Reactors Office chose to adopt the Agreement for construction at the Naval Reactors Facility. The construction manager for work at this facility did not sign; therefore, nonunion contractors do not have to sign the Agreement. Even though nonunion contractors do not have to sign the Agreement, they must adhere to nine of its provisions. The Chicago Operations Office, on the other hand, chose not to adopt the Agreement; therefore, it does not apply to construction at the Argonne National Laboratory-West (See app. II.)

The Agreement is to be incorporated into all DOE-ID construction contracts at INEL. The authority for this incorporation was the Secretary of Energy's January 1985 determination—made under Public Law 85-804 (50 U.S.C. 1437)—which provided that adherence to the Agreement was necessary to "facilitate the national defense."

In addition to the Agreement at INEL, DOE has Agreements in place at five other field locations: the Nevada Test Site and Tonopah Test Range, Nevada; the Rocky Flats Plant, Colorado; the Hanford Site, Washington; the Savannah River Site, South Carolina; and the Oak Ridge Site, Tennessee. As agreed with you, we limited the scope of this review to INEL.

Objective, Scope, and Methodology

To respond to your request, we addressed the following three issues that nonunion contractors raised regarding the INEL Agreement:

- accessibility to DOE-ID construction contracts at INEL,
- costs to DOE resulting from wage rates paid under the Agreement, and
- the requirement to use union hiring halls and additional costs to some nonunion contractors resulting from double payments for pension and health and welfare benefits.  

A hiring hall is a mechanism by which union and nonunion contractors' requests for workers. Unemployed workers report to the union and their names are placed on a list. The workers are assigned to contractors on a first-in, first-out basis.

Page 2  GAO/GGD-81-808R Labor Management Relations
To determine whether nonunion contractors had access to DOE-ID construction work, we reviewed the DOE-ID construction manager's bidding policies and procedures to determine whether any restrictions existed that might have precluded such contractors from bidding on construction contracts. To determine the extent that nonunion contractors had obtained contracts, we analyzed the number and value of contracts awarded to union and nonunion contractors for the period October 1, 1986, through December 31, 1990. We verified the accuracy of the information in this analysis by tracing selected contract information back to the records of the construction manager.

In response to our questions on whether wage rates associated with the Agreement were higher than rates generally paid in the vicinity, the Coordinator prepared a report for us in October 1990 comparing the composite wage rate for a hypothetical project at INEL with the composite wage rate under the Davis-Bacon Act (40 U.S.C. 276a (1976)). This act establishes minimum wage rates for laborers and mechanics working on federal or federally financed construction projects. The minimum wage rates are to be based on wages determined by the Department of Labor to be prevailing in the locality of the proposed construction. Our analysis included an examination of the methodology used to develop the Coordinator's report. We also verified the wage rates used in the report by tracing them back to the Agreement and to the wage determinations made under the Act. In addition, we compared the average wage rate under the Agreement and the Davis-Bacon Act for the 14 different crafts used by the Coordinator in his report.

To assess nonunion contractors' concerns about the union hiring hall and double benefit payment provisions, we interviewed 11 nonunion contractors who had expressed concerns about the Agreement. We also obtained supporting documents from them showing that they paid twice for the same employee benefit coverage. We analyzed information from six union officials on their hiring hall procedures and practices. We also obtained information on the time required to qualify for some of the unions' pension and health and welfare plans.

A number of lawsuits concerning the legality of Agreements were before the federal courts at the time of our review. In addition to three lawsuits over the hiring hall issue (two in Boise, Idaho, and one in Nashville, Tennessee), there was a fourth lawsuit, in Boise, Idaho, contend-
other things, that the Agreement violated the Sherman Anti-Trust Act and that DOE did not have authority under Public Law 85-804 to adopt the Agreement. We are expressing no opinions on any of the issues before the courts. However, we did review documents related to the lawsuits.

We also interviewed and obtained informal comments on the information contained in this report from union and nonunion contractors, union business agents, and DOE officials. Our review, which complied with generally accepted government auditing standards, was made during the period from July 1990 through March 1991.

Nonunion contractors were able to both bid on and obtain DOE-ID construction contracts at INEL. Bidding policies and procedures for non-ID construction contracts show that any contractor, union or nonunion, could bid on construction projects at INEL. All DOE-ID contractors, however, had to sign the Agreement before being awarded a contract. Although 8 of 11 nonunion contractors we interviewed told us that they would not bid on DOE-ID work because they did not want to sign the Agreement, nonunion contractors were successful in bidding on 86 (30 percent) of 286 contracts awarded by DOE-ID from October 1, 1986, through December 31, 1990. (See app. II.)

In October 1990, the composite wage rate under the Agreement was 17 percent higher than the composite wage rate determined under the Davis-Bacon Act, according to the Coordinator's report. The difference increased to 21 percent based on the average wage rate. The higher wage rates were largely due to an allowance for construction workers' travel to and from INEL. Another factor that may explain the difference is that the two rates are adjusted at different times. Under the Agreement, these rates, which every contractor must pay, are determined on the basis of local area collective bargaining agreements between contractors and unions. In addition, in some cases unions allegedly were authorizing contractors to pay lower wage rates for private construction off-site than they were paying for DOE-ID construction. If the wages were paid pursuant to a change in the local collective bargaining agreements, then it would appear that under the Agreement, these lower wage rates should have been incorporated into the Agreement. (See app. IV.)

Nonunion contractors were opposed to the Agreement's union hiring hall provision requiring nonunion contractors to obtain new or replacement workers through union hiring halls. They said the union hiring hall
Conclusions

In November 1984, unions and nonunion contractors adopted the Agreement in an effort to bring about labor stability at INEL. In January 1985, DOE determined that the Agreement was necessary to facilitate the national defense. While the Agreement may result in advantages to the government, unions, and union contractors, certain aspects of it have created problems and concerns for nonunion contractors.

Nonunion contractors said they believe that the Agreement puts them at a disadvantage by requiring them to go through union hiring halls and, in some cases, make double payments for certain employee benefits. Their reluctance to bid on DOE contracts because of these provisions in the Agreement may reduce the level of competition, thereby resulting in increased costs to the taxpayer. Also, questions may arise whether the wage rates required under the Agreement and the alleged union practice of allowing contractors to charge lower wage rates for private construction outside INEL are in the best interest of the government.

While we do not mean to imply that DOE is doing anything improper, we believe these aspects of the Agreement should be reviewed from two perspectives: legal and public policy. In the legal realm, some of the issues raised here are in litigation and may be resolved by the courts. But regardless of the legal issues, we believe the Agreement's provisions that are troublesome to nonunion contractors and raise questions in terms of costs should be evaluated by DOE from a public policy perspective. While DOE has agreed to look into some of the Agreement's provisions, we believe a broader evaluation from a public policy perspective is especially appropriate because DOE has not reassessed the need for the Agreement since 1985.

Recommendation to the Secretary of Energy

We recommend that the Secretary of Energy determine whether provisions in the Agreement, as discussed in this report, remain desirable from a public policy perspective.
We obtained informal comments on the information contained in this
report from DOE officials, union and nonunion contractors, and union
business agents. These officials generally agreed with the factual infor-
mation presented in this report but did suggest some clarifications
which we made. DOE officials, however, expressed the general concern
that our conclusions and recommendation were misleading because they
implied that DOE was doing something improper or could direct unions
and the construction manager to make changes to the Agreement. We
have considered DOE's concern and believe that our conclusions and rec-
ommendation are still applicable.

Regarding the issue of whether the Agreement's provisions dealing with
union hiring halls and double payments are adversely affecting non-
union contractors, a DOE official stated that DOE does not have legal
authority to direct changes to the Agreement to eliminate these pro-
visions. However, he said that its Idaho Operations Office would continue
ongoing discussions with the unions, their benefit trusts, and Agreement
employers in a cooperative effort to resolve these questions. We believe
that such discussions can serve as a good starting point to address these
questions.

Regarding the issue of Agreement wage rates being above Davis-Bacon
wage rates, DOE officials said that it was not illegal to pay wage rates
higher than Davis-Bacon wage rates. They also stated that the difference
in the two rates was partly due to a time lag in making adjustments to
the Davis-Bacon wage rates. It was not our intent to imply that DOE was
doing anything improper. We have revised the report to clarify this
point. We continue to believe, however, that DOE should reassess
whether the wage rate difference remains in the best interest of good
public policy.

In regard to lower wage rates for private construction outside INL, a DOE
official said that Article XVIII of the Agreement is not clear. His understand-
ing was that the article is intended to ensure uniformity among the
provisions of collective bargaining agreements negotiated by the various
crafts and the provisions of the Agreement. He did not agree that the
language was intended to require that the provisions of unique, project-
specific agreements be incorporated within the Agreement. However, he
said that the Idaho Operations Office would work to interpret Article
XVIII. Regardless of the intent of Article XVIII, we believe the govern-
ment's interest needs to be protected so that it is not discriminated
against in the wages it pays.
The FOI official said that several of the issues discussed in our report concerning requirements for union contractors to follow provisions of collective bargaining agreements may be answered by certain court cases in progress at the time of our review. He said he would wait to take action until after the courts have ruled on these issues. We believe this approach is reasonable.

As arranged with your office, we plan no further distribution of this report until 30 days after the date of issuance, unless you publicly announce its contents earlier. At that time, we will send copies to the Secretary of Energy and other interested parties and make copies available to others upon request.

The major contributors to this briefing report are listed in appendix VI. If you or your staff have any questions about the report, please call me on (202) 275-5674.

Sincerely yours,

Bernard L. Ungar
Director, Federal Human Resource Management Issues
## Contents

### Letter

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter</td>
<td>1</td>
</tr>
</tbody>
</table>

### Appendix I

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicability of the Site Stabilization Agreement to Construction Work at the Idaho National Engineering Laboratory</td>
<td>12</td>
</tr>
<tr>
<td>All DOE-ID Contractors Must Sign Agreement</td>
<td>13</td>
</tr>
<tr>
<td>DOE-Pittsburgh Naval Reactors Office Contractors Do Not Have to Sign Agreement</td>
<td>14</td>
</tr>
<tr>
<td>DOE-Chicago Operations Office Did Not Adopt Agreement</td>
<td>14</td>
</tr>
</tbody>
</table>

### Appendix II

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicability of the Site Stabilization Agreement to Nonsignatory and Signatory Contractors</td>
<td>15</td>
</tr>
<tr>
<td>Nine Provisions Apply to Nonsignatory Contractors</td>
<td>15</td>
</tr>
<tr>
<td>All Provisions Apply to Signatory Contractors</td>
<td>16</td>
</tr>
</tbody>
</table>

### Appendix III

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accessibility to DOE-ID Construction Contracts at the Idaho National Engineering Laboratory</td>
<td>17</td>
</tr>
<tr>
<td>Nonunion Contractors Were Permitted to Bid on DOE-ID Contracts</td>
<td>17</td>
</tr>
<tr>
<td>Nonunion Contractors Received DOE-ID Contracts</td>
<td>18</td>
</tr>
</tbody>
</table>
Appendix IV
Higher Wage Costs Resulting From the Site Stabilization Agreement at the Idaho National Engineering Laboratory

Wage Rates at INEL Were Higher Than Davis-Bacon Rates
20
DOE Not Receiving Benefit of Reduced Off-Site Rates
21

Appendix V
Nonunion Contractors' Concerns About the Union Hiring Hall and Fringe Benefit Provisions

Nonunion Contractors Opposed to Union Hiring Halls
22
Hiring Hall Provision May Break Up Regular Work Crews
23
Double Payments for Fringe Benefits
23

Appendix VI
Major Contributors to This Report

24

Figures

Figure 1.1: Map of the Idaho National Engineering Laboratory
12
Figure 1.2: Applicability of the Agreement
17
Figure II.1: Major Provisions of the Agreement
15
Figure III.1: Nonunion Contractors Are Able to Obtain Contracts
17
Figure III.2: Number of Construction Contracts Awarded
18
Figure IV.1: Percentage of Dollars Awarded for Construction Contracts
19
Figure IV.1: Higher Costs Associated With the Agreement
20
Figure V.1: Concerns About Union Hiring Halls and Benefit Payments
22
Abbreviations

DOL: Department of Energy
DOE-IO: Department of Energy-Idaho Operations Office
INEL: Idaho National Engineering Laboratory
Applicability of the Site Stabilization Agreement Construction Work at the Idaho National Engineering Laboratory

Figure 1.1:

GAO Map of the Idaho National Engineering Laboratory

Idaho National Engineering Laboratory

- Naval Reactors Facility
- Argonne National Laboratory - West
GAO Applicability of the Agreement

- For DOE-ID contracts, contractors have to sign
- For DOE-Pittsburgh Naval Reactors Office contracts, contractors do not have to sign
- For DOE-Chicago Operations Office contracts, Agreement does not apply

There are three different organizations involved in construction work at NEL. The Agreement applies differently to each organization, as shown in the following sections.

All DOE-ID Contractors Must Sign Agreement

The construction manager for DOE-ID signed the Agreement. Therefore, under the subcontracting provision, all subcontractors must sign the Agreement and meet all of its provisions. (See app. II.)
DOE-Pittsburgh Naval Reactors Office Contractors Do Not Have to Sign Agreement

The Naval Reactors facility is under the operational control of DOE's Pittsburgh Naval Reactors Office. The construction manager for the Pittsburgh Naval Reactors Office did not sign the Agreement. Consequently, its subcontractors had the option of either signing or not signing the Agreement.

DOE-Chicago Operations Office Did Not Adopt Agreement

The Argonne National Laboratory-West facility is under the operational control of DOE's Chicago Operations Office. The Chicago Operations Office did not adopt the Agreement. Consequently, none of the provisions apply to construction work done at the Argonne National Laboratory-West facility.
Applicability of the Site Stabilization Agreement to Nonsignatory and Signatory Contractors

Figure 11.1:

GAO Major Provisions of the Agreement

• Nine provisions apply to nonsignatory contractors
• All provisions apply to signatory contractors

Nine Provisions Apply to Nonsignatory Contractors

The nine provisions that apply to nonsignatory contractors include such things as equal employment opportunity, DOE contracting rights, work rules relating to employee and employer conduct, hours of work, wage rates, wage rate changes, and procedures for notifying employees of closing down some or all operations. In addition, the Agreement establishes a Coordinator position and a Standing Board of Adjustment, which also has application to nonsignatory contractors.¹

¹This board is made up of the Coordinator and representatives of signatory contractors and unions. It is required to meet not less than once a month to discuss alleged violations of the Agreement and any practices that might lead to labor-demanding or a dispute.
All Provisions Apply to Signatory Contractors

In addition to having to comply with the nine provisions, contractors who sign the Agreement must comply with its remaining provisions. Some of these provisions include a no-strike/no-lockout clause, authorization for union representatives to have access to job sites, procedures for handling grievances, a requirement for subcontractors to sign the Agreement and pay into union pension and health and welfare plans, and a requirement to obtain workers through union hiring halls.
Figure III.1: GAO Nonunion Contractors Are Able to Obtain Contracts

- Policies and procedures allow any contractor to bid
- From 10-1-86 through 12-31-90, nonunion contractors received:
  - 30 percent of the contracts
  - 8 percent of the total dollar value of the contracts

Nonunion Contractors Were Permitted to Bid on DOE-ID Contracts

The Agreement did not preclude nonunion contractors from bidding on DOE-ID construction work at INEL. In addition, the policies and procedures used by DOE-ID's construction management to obtain bids for subcontract work at INEL showed that any contractor could submit bids. However, a contractor awarded a subcontract was required to sign the Agreement. Eight of 11 nonunion contractors we spoke with told us they would not bid on DOE-ID work because they did not want to sign the Agreement.
Nonunion Contractors Received DOE-ID Contracts

The requirement for signing the Agreement did not deter all nonunion contractors from bidding on and receiving DOE-ID contracts. From October 1, 1986, through December 31, 1990, nonunion contractors—those working predominantly as nonunion contractors outside the INE boundaries—received 86 (30 percent) of the 286 INE contracts awarded and 8 percent of the total dollar value of the contracts. Thus, nonunion contractors were able to bid on and obtain DOE-ID work at INE. Figures III.2 and III.3 show the number of DOE-ID contracts and the percentage of dollars awarded for construction at INE during the period from October 1, 1986, through December 31, 1990. We did not evaluate the reasons for the differences in dollar amounts of contracts awarded to union and nonunion contractors.

Figure III.2: Number of Construction Contracts Awarded

<table>
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<tr>
<th>Year</th>
<th>Number of Contracts</th>
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<tbody>
<tr>
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<tr>
<td>1988</td>
<td>30</td>
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<tr>
<td>1989</td>
<td>40</td>
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<tr>
<td>1990</td>
<td>50</td>
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<tr>
<td>1991</td>
<td>60</td>
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Note: Fiscal year 1991 data are through December 31, 1990.
Figure III.3. Percentage of Dollars Awarded for Construction Contracts

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<tbody>
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<td>Percentage of Dollars Awarded for Construction Contracts</td>
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Note 1: Fiscal year 1991 data are through December 31, 1990.

Note 2: One contract in fiscal year 1988 and 1990 represented 70 and 67 percent, respectively, of the total.
Higher Wage Costs Resulting From the Site Stabilization Agreement at the Idaho National Engineering Laboratory

Figure IV-1

GAO Higher Costs Associated With the Agreement

- Composite wage rate was 17 percent higher than Davis-Bacon wage rate
- Average wage rate was 21 percent higher than Davis-Bacon wage rate
- Unions allegedly were not passing lower off-site rates on to DOE, as required by the Agreement

Wage Rates at INEL Were Higher Than Davis-Bacon Rates

The Agreement, as incorporated into boc contracts, requires all contractors and subcontractors, whether they signed the Agreement or not, to pay the wage rates and provide employee fringe benefits as specified in the Agreement. These rates and fringe benefits were determined on the basis of local area collective bargaining agreements made by contractors and unions. When wage changes were made in these local agreements, the Agreement was to be modified to incorporate such changes.

In October 1980, the Coordinator, who was responsible for the administration of the Agreement, compared the composite wage rate for a hypothetical project across 14 different construction crafts at INEL with the
composite wage rate established for the same crafts under the Davis-Bacon Act. Under this act, the Secretary of Labor is required to establish minimum wage rates for federal or federally funded construction projects on the basis of prevailing rates in the vicinity. The Coordinator found that the composite wage rate for INE was 17 percent higher than the same rate established using Davis-Bacon rates. If the Coordinator had compared the average wage rate for the same 13 crafts at INE, with the average wage rate under Davis-Bacon, the difference would have been 21 percent.

Most (58 percent) of the difference between the INE and Davis-Bacon composite wage rate was attributable to the inclusion in the INE rate of an allowance for travel to and from INE, which was not included in the Davis-Bacon rate. Another factor that may explain the difference is that the two rates were adjusted at different times. Unions sent wage rate changes directly to the Coordinator who promptly adjusted the rates in the Agreement while the Department of Labor took longer to make adjustments to Davis-Bacon rates. Consequently, Davis-Bacon rates tended to be lower than the INE rates.

DOE Not Receiving Benefit of Reduced Off-Site Rates

A nonunion contractor told us that, in addition to the higher wage rates associated with the Agreement, unions had not granted the lower wage rates established for a construction project off the INE site. The Coordinator confirmed that some unions allowed contractors to reduce rates on selected projects outside the INE boundaries. For example, on a private project in Idaho Falls to build a melting plant, unions allegedly allowed the contractor to reduce wages rates 10 percent below the wage rates in the Agreement. If wage rates for private construction projects are different from wage rates being charged for government construction projects without the government having the benefit of the lower rate, we believe it would be contrary to the Agreement. Article XVIII of the Agreement states that any changes in wage rates pursuant to a change in the local collective bargaining agreement should be incorporated into the Agreement. Our interpretation of Article XVIII of the Agreement is that unions were to grant the same wage rates given to contractors for off-site work, if the rates were through a change in the local collective bargaining agreements.

We discussed this practice with a DOE official. He disagreed with our interpretation of article XVIII but added that it was not clear what was intended. He said, however, that the Idaho Operations Office would work to seek an interpretation of article XVIII.
Nonunion Contractors’ Concerns About the Union Hiring Hall and Fringe Benefit Provisions

Figure 7.1:

GAO Concerns About Union Hiring Halls and Benefit Payments

- Philosophically opposed to union hiring halls
- Can result in breaking up regular work crews
- Can result in paying twice for pension and health and welfare benefits

Nonunion Contractors Opposed to Union Hiring Halls

The Agreement specifies that contractors and subcontractors who have signed the Agreement be bound by the hiring procedures of the local unions who also have signed the Agreement. The unions, in turn, agree to furnish qualified journeymen and apprentices to the contractors and subcontractors.

Nonunion contractors are philosophically opposed to union hiring halls. They maintain they dislike the hiring hall provision of the Agreement and contend that because Idaho is a right-to-work state and they choose
Appendix V
Nonunion Contractors' Concerns About the Union Hiring Hall and Fringe Benefit Provisions

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to be nonunion, they should not be forced to obtain workers from union hiring halls.

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Hiring Hall Provision May Break Up Regular Work Crews

The business agents for two of the six unions we contacted said that nonunion contractors must obtain workers from union hiring halls. Nonunion contractors said that obtaining workers from the hiring halls might break up their regular work crews that have worked for them off the for long periods of time.

However, according to the four other union business agents, nonunion contractors can take permanent employees to jobs on the site without placing them on the halls' out-of-work list. Only workers replaced or added to permanent crews must go on the halls' out-of-work list and be dispatched by the unions on the basis of the hiring hall list. These business agents said that this practice of allowing nonunion contractors to take permanent workers directly to the site is not part of their written procedures for dispatching workers but rather is done informally.

---

Double Payments for Fringe Benefits

As we noted in appendix IV, the Agreement establishes wage rates and fringe benefits that all contractors at NEL must pay. The fringe benefits include, among other things, a requirement that payments be made into union pension plans and health and welfare plans.

Nonunion contractors said that the Agreement could require them to pay twice for health and pension benefits for their permanent workers—once through their own plan and once through the union's plan. They also expressed concerns that their permanent workers may not receive benefits from the union plan because they may not work long enough to take advantage of these benefits. Our review of requirements for five union plans showed that for health and welfare plans, from 250 to 450 hours of work were required before workers were entitled to receive benefits. For pension plans, from 5 to 10 years were required before a worker could receive benefits.

We found that two nonunion contractors had made double payments for health and welfare benefits. A third nonunion contractor was being sued in Federal District Court to make payments to a union pension and health and welfare plan even though the contractor had made payments into his own plan.
Appendix VI

Major Contributors to This Report

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