Erie County Courthouse Construction Projects

Project Labor Agreement Study
ERIE COUNTY COURTHOUSE CONSTRUCTION PROJECTS

PROJECT LABOR AGREEMENT EVALUATION

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Prepared by:
ERNST & YOUNG LLP
Two Commerce Square
Suite 4000
2001 Market Street
Philadelphia, Pennsylvania 19103
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1. EXECUTIVE SUMMARY

Our Charge

Ernst & Young’s Construction Advisory Services ("E&Y") was asked to review and analyze a Project Labor Agreement ("PLA") in the County of Erie, New York ("County") with respect to the two phases ("Phase I" and "Phase II") of the Erie County Courthouse Construction Project ("Project"), located in the city of Buffalo, New York.

Phase I involved construction of a new seven story Family Court building on a site adjacent to the existing court, county and public/municipal buildings. Occupancy of the building is scheduled for mid-September, 2001, and construction is close to being complete. The total cost of Phase I is approximately $23.8 million.

Phase II involves the renovation of three existing court and County buildings and includes renovation of the seven story courthouse "Annen" building, selective renovation of the "Old County Hall" a historic structure which will remain partially occupied and utilized during construction, and renovation of an existing four-story office building that will house a law library.

The PLA entered into for Phase I contained language permitting the County to conduct an independent evaluation of the PLA near the completion of Phase I to determine if the goals set for it had been met. It also permits the County to unilaterally terminate the PLA if it is determined that it did not meet the goals set for it or if it would not further the stated goals going forward.

Specifically, E&Y was asked to perform an independent evaluation of the impact of the PLA on Phase I of the Project and make a recommendation regarding whether the PLA should be continued into Phase II. We were asked to take into particular consideration any impact the PLA had or could have on competition and its impact on participation by potential bidders on Phase II. Additionally, we were asked whether the PLA would foster or inhibit participation on Phase II by contractors with required historical renovation skills.

Our Methodology

E&Y performed research that included comparing Phase I and Phase II of the Project to other Erie County public works projects (i.e., Ralph Wilson Stadium, Northwest Academy, and Roswell Park Cancer Center). We analyzed the Phase I plan holder records maintained by the County, the Phase I bid packages and bidder participation sheets, and Ralph Wilson Stadium bid packages. We also conducted research of E&Y’s proprietary databases of domestic and international construction labor information. We reviewed Phase I budget information. We contacted appropriate state agencies for information regarding prevailing wage rate information. We contacted the construction manager of a similar upscale New York courthouse renovation project being conducted without a PLA to evaluate similarities and/or differences between that labor market and the County’s and the impact that foregoing a PLA was anticipated to have on that project. Our research
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...included investigating national labor-related safety statistics, and other published research relating to PLAs.

Integral to our research and evaluation was conducting interviews of personnel and contractors involved in Phase I construction and those potentially involved in Phase II construction. Towards that end, we interviewed, among others, the construction managers for Phase I and Phase II, the Phase I project manager, the Phase I project superintendent, several union shop and non-union shop contractors, union representatives, elected officials, past and present County representatives charged with overseeing the Project, trade organization representatives that represent non-union contractors and trade organization representatives that represent both union and non-union contractors.

Our Findings

After starting our research, E&Y determined that the question presented to us was whether the use of a PLA discourages competition, resulting in a detrimental effect to taxpayers and whether the use of a PLA diminishes the likelihood of qualified and appropriate craft and tradesmen participating on the Project. The answer to that question was found to be in the affirmative, as PLAs have the practical effect, if not the stated purpose, of eliminating competition.

Special care should be taken when evaluating the results herein to note that the issues here did not reduce themselves to an organized labor versus non-union labor dispute. In fact, healthy tension between organized labor and non-union labor is conducive to a competitive, non-discriminatory marketplace; that tension and competition leads to better pricing for all consumers.

E&Y found that Phase I bidder participation was diminished because the County chose to utilize a PLA. Further, the use of PLAs adversely affects competition for public bid projects, to the likely detriment of cost-effective construction. Our research revealed that the use of PLAs strongly inhibits participation in public bidding by non-union contractors and may result in those projects having artificially inflated costs.

The use of PLAs is often motivated by political considerations, intended to garner favor with and secure work for union workers and not as a genuine device used to ensure cost-effective, timely and minimally disruptive construction projects. PLAs are discriminatory and anti-competitive and there are no apparently valid economic justifications for the continued use of a PLA on Phase II of the Project.

While PLAs may sometimes act as, in effect, a type of "insurance policy" that helps mitigate labor disruptions and may minimally help to prevent schedule variances, there is no empirical economic evidence that supports their continued use. Particularly in Erie County, where labor strife has been minimal in the past, such concerns take a back seat to

1 All participants were asked identical questions, differing only by the type of organization the interviewee was affiliated with (i.e., contractor, trade organization representative, etc.). No distinction was made with respect to questions asked of union and non-union shop aligned individuals.
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the "union monopoly" effect the use of PLA engenders. Other avenues are available to
realize the same benefits that PLAs purportedly offer, and there is no justifiable reason for
(intentionally or not) excluding the 80 percent of the construction industry's employees
who are not union members.

Our Recommendation

It is E&Y's opinion that a PLA should not be utilized for Phase II of the Project because
of the deleterious effects that its use would have on both competition and on participation
by craft and trade contractors who are skilled in historical renovation. It is our opinion
that the use of PLA results in union labor exercising near monopoly control over project
sizes and thoroughly diminishes competitive bidding. There is no discreetly discernible
economic benefit to utilizing a PLA, but there is substantial evidence that indicates that the
use of PLAs can have negative effects by excluding, in practice if not by their tenor, a
large percentage of the construction workforce.

Given the relatively placid labor climate among union and non-union workforces in Eric
County, the stated rationales for utilizing a PLA can be accomplished in other ways. In
fact, in E&Y's experience, it is the experience and control exerted by a proactive and
knowledgeable construction manager that is largely responsible for project successes. In
addition, other avenues are available to help minimize potential labor strife and meet the
County's other goals. They include putting requirements in the bid specifications that
contractors guarantee not to strike, strive to employ target percentages of minorities, use
apprentices when possible, abolish shift work premiums, and hire local workforces to the
extent possible.

Unfortunately, Eric County may be in the untenable position of having established the
expectation that a PLA will govern Phase II of the Project by utilizing a PLA on Phase I.
Further, there is evidence that labor unions in the Eric County area are prepared to "target"
the Project if a PLA is not used on Phase II and may succeed in either delaying bidding or
extending the Project's schedule, resulting in increased costs to the County. In addition,
there is the very real possibility that access to the construction sites in Phase II will be
impacted by labor union activity in the area. The unions will likely perceive a high
profile, centrally located downtown site such as the Old County Hall, to be a prime
location for union, propaganda and activity. Individuals making decisions with respect to
the PLA must be mindful of these impacts.
II. INTRODUCTION

In an agreement dated July 2001, Phillips Lytle Hitchcock Blaine & Huber LLP, on behalf of the County of Erie, New York, asked Ernst & Young's Construction Advisory Services ("E&Y") to review and analyze a Project Labor Agreement ("PLA") in the County of Erie ("County") with respect to the Erie County Courthouse Construction Project ("Project").

The Project is scheduled to be completed in two phases:

1. Phase One involved construction of a seven story, 168,000 square foot new Family Court building on a site adjacent to the existing court, county and public/municipal buildings. Occupancy of that building is scheduled for mid-September, 2001. The value of this phase is estimated to be approximately $27 million.

2. Phase II involves the renovation of three existing court and County buildings:

   - First is renovation of the ten story, 220,000 square foot "Annex" building for new criminal courts, judges' suites, defendant holding, arraignment court and district attorney's offices.
   - Second will be selective renovation of the historic "Old County Hall", which dates from approximately 1885. That building will contain Surrogate's Court, County Clerk, County Legislative Offices and Chamber and similar functions. The Old County Hall is connected to the Annex and will remain partially occupied and utilized during construction.
   - Third will be renovation of an existing 1930's era four-story office building that will house a law library.

Phase II of the Project will require extensive work phasing because of the need to have the Annex and Old County Hall buildings remain in use during construction.

Before beginning construction of Phase I, the County authorized the construction managers to enter into a PLA with the local building trade unions. The stated goals of the PLA, as provided to E&Y in the County's request for proposal, are to further New York's competitive bidding status, obtaining the best construction work at the lowest possible price, eliminating favoritism, improvidence, fraud and corruption in the awarding of public contracts, cost savings for the taxpayers and minimal disruption and inconvenience to the Courts of Erie County and the public at large.

Near completion of Phase I construction, the County, in accordance with the language of the PLA, decided to obtain an independent evaluation of the anticipated efficacy of the PLA on Phase II of the Project and a recommendation of whether the PLA should be continued during Phase II. Further, E&Y was requested to conduct a limited evaluation of the impact of the PLA on Phase I of the Project. In accordance with the terms of the
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Legislation enabling the use of a PLA, the County has reserved its rights to conduct this review, near the end of Phase I, and further reserved the right, but not the obligation, to direct the Construction Manager to unilaterally terminate the PLA if its stated goals were not met. Article IV of the PLA explicitly sets forth the County's rights in this regard.

E&Y's charge for the engagement were set forth as follows:

With Respect to Phase I:

- Assess whether the PLA resulted in a decrease in the number of bidders or a decrease in competition.
- Assess whether the PLA alleviated work disruptions and delays.
- Assess whether the PLA alleviated disruption to the Courts and public.
- Assess whether the PLA resulted in cost savings to the taxpayers.

With Respect to Phase II:

- Conduct a limited market study to determine the impact of the PLA on bidding participation by contractors (primarily contractors in Erie County and surrounding region) with consideration of shift flexibility and special craftsmanship required with respect to the renovation of the Old County Hall.
- Discuss how bidder participation compares with similar public projects.
- Assess whether the PLA can result in competitive bidding and resultant savings to the taxpayers.
- Assess whether the PLA can alleviate disruption to the Courts and the public.
- Assess the operation of other PLAs on selected renovation projects of the same magnitude.

In addition, to the extent possible, E&Y was asked to recommend other criteria for evaluating the performance of the PLA on Phase I and identify the advantages and disadvantages of continuing the PLA through Phase II.
III. OUR RESEARCH AND METHODOLOGY

E&Y’s approach to this engagement included comparing Phase I and Phase II of the Project to other Erie County public works projects (i.e., Ralph Wilson Stadium, Northwest Academy, and Roswell Park Cancer Center) and analyzing the Phase I plan holder records maintained by the County, the Phase I bid packages and bidder participation sheets, and Ralph Wilson Stadium bid packages. We reviewed the Project’s available Phase I budget information. We conducted research of E&Y’s proprietary databases of domestic and international construction labor information and reviewed previously published academic and other research on the effects of PLAs on publicly bid construction projects. We performed research in appropriate state agency databases for information regarding prevailing wage rate information and our research included investigating national labor-related safety statistics, and other published data relating to PLAs.

With respect to gathering information outside of Erie County, E&Y conducted in-house research of its databases of worldwide construction operations data and resources. We contacted appropriate New York state agencies for prevailing wage rate and other information, as required. We contacted the construction manager of the current state of development New York courthouse renovation project being conducted without a PLA to evaluate similarities and/or differences between that labor market and the County’s and the impact that foregoing a PLA was anticipated to have on that project.

Our approach to this engagement also involved both live and telephone interviews. Our interview approach involved asking the same questions of all whom we interviewed, modified only slightly to compensate for the type of organization the person being interviewed was affiliated with. For example, trade organization representatives were asked slightly different questions than were contractors. However, both union and merit shop representatives were asked identical questions.

We had extensive conversations with County representatives (past and present) and County engineers and architects. We conducted live interviews with the construction managers for Phase I and Phase II of the Project and the project manager and project superintendent for Phase I. We conducted both live and telephone interviews with many union and merit shop contractors in and around Erie County. Further, we interviewed labor union representatives and individuals representing trade organizations associated with non-union contractors. We also conducted interviews with trade organizations comprised of both union and non-union members and we interviewed one Erie County legislator who is also affiliated with a local union. E&Y met with and interviewed both past and present County representatives on several occasions to discuss the work in progress and gather additional information. A listing of our contact and interview resources is attached as Appendix A.

Our questions to Erie County area contractors and all others interviewed were broad-based and intended to elicit open and frank responses. E&Y assured those participating that attribution of specific remarks would not be made and all information gathered would be presented in the aggregate, or as conclusions that we drew from all responses. The
participants were further assured that their names and the names of their organizations would be revealed only in the form of an appendix to this report that lists those to whom we spoke.

**General Project Labor Agreement Research**

Project labor agreements are said to further a variety of goals. Included among these goals are the following:

- Helping ensure timely completion of projects;
- Promoting work site harmony when union and non-union contractors are working together;
- Promoting cooperation between disparate trades working at a site, whether union or not;
- Preventing project costs from rising due to strikes by a workforce and/or lockouts by owners;
- Providing appropriate tradesmen for a project in sufficient numbers;
- Ensuring a productive uniform work schedule; and
- Providing for uniform overtime schedules and hours, among others.

Project Labor Agreements are ordinarily supported by unions and their labor forces, who generally see the agreements as a way to ensure union labor and wage rates are utilized on construction projects. The agreements also provide a limited way for unions to control the amount and types of non-union workers on a project, as PLAs will set forth ratios that detail, for open shop contractors on the project, how many of their regular (or "core") employees and how many union workers they must utilize on the affected project. In the case of the Project's PLA, the ratio was set at one to one: when any non-union contractor used one of his employees on the project, the second worker he utilized had to be pulled from the union hiring hall, and so forth as more workers were added.

Union-affiliated organizations and union leaders also put forth the idea that safety concerns mitigate in favor of PLAs, reasoning that utilizing trained union workers is less likely to cause safety-related problems or issues. They have also asserted that PLAs save funds when compared to non-PLA projects, as the unions will often make concessions on industry fund payment obligations and the like. Union representatives will tout the idea that PLAs save taxpayers money on public projects, assuming that projects will come in on-time and on-budget as a result of having a PLA and its no-strike and other provisions. It should be noted that the goal of avoiding labor unrest or as a response to threatened organized labor actions are not permissible goals of PLAs, in accordance with New York state appellate court decisions.  

Non-union (known as "merit" or "open") shops, generally do not support the use of PLAs. Their reasons for not supporting the agreements are varied, but primarily center on cost.

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and competition concerns. Merit shops and trade organizations argue that PLAs severely
inhibit competition on jobs because many, if not most, non-union shops do not want to
become part of union collective bargaining agreements. Further, merit shops (and, our
research found, even some union shops) perceive PLA staffing rules as generally
unfavorable, often resulting in the shops’ own core employees being excluded from a
PLA-controlled project. This is a result of open shops being required to draw some
percentage (which can be as high as 80 percent) of their workforce on a PLA-covered
project from union hiring halls.

PLAs are the subject of considerable controversy, both at the local level and on a national
scale, and are consistently attacked or encouraged by proponents and opponents. At the
Federal level, Executive Order 12021, Preservation of Open Competition and Government
Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally
Funded Construction Projects (as amended on April 6, 2001 by Executive Order 12028),
was issued on February 17, 2001, prohibiting the mandatory use of PLAs on federally-
 funded construction projects (see Appendix B). At the state level, inconsistency remains
regarding the mandatory or permissive use of PLAs, with three states to date enacting
legislation that expressly prohibits government agencies from imposing union-only PLAs.4
Outside of the legislative arena, legal challenges to PLAs continue.5

Erie County’s Use of PLAs on Other Projects

It was reported to E&Y that, in the recent past, most downtown Buffalo public
construction projects were completed with primary union labor, while the majority of
Erie County public works construction had been completed by non-union workforces.
E&Y was informed that PLAs have been used in the Erie County area in the recent past
for several projects including those listed below:

Buffalo-Niagara International Airport
At a cost of approximately $170 million, the Buffalo-Niagara Airport project was
completed in 1997. Through interviews with county officials and others involved in
construction in the Erie County/Buffalo area, it was learned that the PLA implemented for
the Buffalo-Niagara International Airport project was entered into only after mass protests
and picketing by the Buffalo Building and Construction Trades Council (“BB&T”), a labor
union organization with a history of active protests against non-union construction
projects. The PLA went into effect about one-half way through the project.

5 See, e.g., Greenlawn Const. Co. v. NITA, 644 A. 2d 76, 86 (N.J. 1994) (“A state’s laws may prohibit a
project labor agreement specification in public contracts without running afoul of the NLRA.”). See also,
Forme Constr. Inc. v. Mercer County, 669 A. 2d 1369 (N.J. 1995) (holding that union-only PLAs mandated
by government are generally impermissible); Associated Builders & Contractors, Inc. Golden Gate
Chapter v. San Francisco Airport Commiss, 87 Cal. Rptr. 2d 654 (1999) (PLAs permissible to “prevent
costly delays” even in absence of proof of injury to competition). See also Callahan & Sec v. City of
decision and concerted effort to “target” this project and secure all work for union
tradesmen.

Northwest Academy School
Like the Buffalo-Niagara International Airport project, the Northwest Academy school
project, which was headed by The Buffalo Board of Education, did not begin with a PLA
in place. However, following reportedly intense union pressure, which included picketing,
strikes and, allegedly, some illegal acts, a PLA was implemented for the project. This
project’s cost rose from an estimate of $26 million to $32.4 million, although it is not clear
what portion of that cost, if any, is directly attributable to the use of a PLA on the project.
PLA opponents and proponents offer differing accounts of the reasons for the increased
costs.

Roswell Park Cancer Institute
The $240 million Roswell Park Cancer Institute construction project did utilize a PLA for
some of its work packages. The use of PLAs on this project has a tortured history, as the
use of the PLA was first ruled to be illegal at the trial court level in a consolidated case
that also examined the use of PLAs on the New York State Thruway construction projects.
That decision was later overturned by the Appellate Division Third Department in Albany.
The Associated Builders and Contractors trade organization (comprised of non-union
members) appealed the decision and was unsuccessful in the New York State Court of
Appeals, which ruled that the use of PLAs on the Roswell Park project was invalid as it
did not support the goals of New York’s competitive bidding statutes. Again, increased
project costs above the estimates were blamed on the PLA by PLA opponents and excused
by PLA boosters as having different causes.

Ralph Wilson Stadium
With a budget exceeding $68 million, construction on the Ralph Wilson Stadium project
began during January 1999. It took approximately seven months to complete the majority
of the construction, with the administrative building finishing up in June 2000.
Approximately 70 contracts were awarded on this project which was not governed by a
PLA. It was decided that enacting a PLA on this project would severely limit competition
and result in an increase in costs to the County.

Jefferson County Courthouse Renovation
Located in Watertown, New York, the Jefferson County Courthouse project is budgeted at
$14 million and is comprised of approximately 60 percent new construction and 40
percent renovation work. Included in the renovation work is the complete rehabilitation of
a 45,000 square foot building listed on the National Historic Register. It has recently been
determined that this project will not utilize a PLA, with loss of competition cited as the
main reason for this decision. Jefferson’s project is due to bid in November 2001.1

1 An analysis of the potential impact of using a PLA on this project was undertaken by the Jefferson County
Board of Legislators and Bernstein-Carr Associates, P.C. See Analysis of the Impact on the Jefferson County
Courthouse Complex through Project Labor Considerations, P. Carr (Sep., 2000)

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Project Labor Agreement Proponents

As expected, most Erie County area union shop contractors and union representatives are strongly in favor of continuing with a PLA on Phase II. In fact, union leaders and union proponents in the County legislature are of the opinion that using a PLA on Phase II is, in their words, "a done deal". Accordingly, they fully expect that Phase II of the Courthouse Construction Project will be done with a PLA in place.

Our interviews and conversations with Erie County area union shop contractors and representatives indicated that their desire for implementation of PLAs is predicated on several purported benefits. Primarily, though, the overarching concern of PLA proponents seemed to be that of securing work for union contractors and, in most instances, insuring that larger, higher-profile projects are union-only.

E&Y's research found that another reason for the union's promotion of PLAs is that non-union contractors are allegedly able to pay less than the New York State required prevailing wage rates on public works projects. In New York, the State Department of Labor is responsible for setting and publishing prevailing wage rate standards, which, in the case of Erie County, are almost identical to union wage rates. PLA supporters stated that non-union contractors are able to gamble that the New York State Department of Labor (which is responsible for enforcing payment of prevailing wage rates by contractors on publicly funded projects) will not audit their payment records and therefore escape detection. The reasoning then was that imposition of a PLA will create a "level playing field" where all craft and trade labor is paid the same "prevailing wage" (union) rates.

Additionally, PLA proponents stated that the use of a PLA (and predominantly union labor) led to efficiencies on construction projects, in that the unions are able to draw on qualified, well-trained labor (including apprentices) from their union halls, ensuring an adequate supply of labor for large projects. In particular, the use of apprentices is touted as a cost-saving device, which union-affiliated personnel claim is something that is unavailable with open shop contractors. The union tradesmen are also able to cross borders into other counties' union hiring halls to get additional labor if there is a shortfall in their home county. The union-affiliated personnel we spoke to claimed that merit shops are unable to obtain additional qualified workers if the need arises, as their options are limited to placing advertisements for additional workers, who may or may not be competent and/or well-trained. Last, the superior safety of union workforces is proclaimed, although information from the US Occupational Safety and Health Administration ("OSHA") indicates that union contractors have suffered higherfatality rates than their non-union equivalents (see Appendix C).

* Analysis of Construction Fatalities - The OSHA Data Base 1985-1989, U.S. Department of Labor Occupational Safety and Health Administration, November 1990
Project Labor Agreement Opponents

Also as expected, E&Y's interviews with non-union contractors and trade organization representatives revealed several arguments for not implementing PLAs. Arguments for foregoing PLAs included fostering a more competitive bidding climate, with non-union (and arguably, less expensive) contractors being encouraged to bid on projects without encountering cumbersome and costly union collective bargaining agreement requirements.

The proposition that open shops may offer substantial hourly labor cost savings is, however, mostly debated when recognition is made of the fact that New York State is a "prevailing wage" jurisdiction. That requirement mandates that wages paid on publicly financed projects must be in accordance with the "prevailing wage" in the area, as determined by the New York State Department of Labor - Bureau of Public Work. As noted previously, those rates are very often identical to (or within cents of) union wages in the areas they cover. Such is the case in Erie County. Nonetheless, in the case of renovation work, particularly renovation of historic buildings where smaller shops of specialized craftsmen and tradesmen would likely be utilized, PLA detractors argue that implementing a PLA will limit the number of bidders on the project. This, they posit, almost always results in higher project costs because merit shops will not bid on projects that utilize a PLA to govern the workforce.

The assertion that contractors (both larger general contractor companies and smaller craft shops) do not wish to bid on or participate in PLA-governed jobs has been borne out by E&Y's research. For example, one trade organization representing western New York area merit shops indicated that of the 60 general contractor members of the organization, approximately 50 would have been qualified and inclined to bid on Phase I of the Project. However, it was reported that because there was a PLA governing the workforce, none of those contractors bid on Phase I and likely would not bid on Phase II. Of course, each contractor would have to be individually polled to determine on a first-hand basis whether they would have bid, but the sentiment expressed so far held up and was confirmed with E&Y's research of other open shop contractors' opinions.

Countering the union argument regarding their ability to obtain additional workers from union hiring halls, merit shop contractors stated that when union contractors are forced to go to the union hiring halls for additional labor, the workers they get are not necessarily the most competent, efficient or productive workers. In fact, some union contractor representatives also voiced similar concerns. Several of the merit shops we spoke with claimed that they often utilized union labor (subcontractors) with good results when they were in need of additional workers. That ability, they claimed, gives open shop contractors the "best of both worlds" and gives them greater flexibility with respect to cost-efficient and productive staffing.

From our conversations and interviews, it appears that the reality of the situation with respect to obtaining labor from union halls is one of "the luck of the draw": that is, both union and non-union contractors drawing from the hall may or may not get an efficient, skilled and productive worker. This concern becomes especially relevant on large-scale
projects, such as Phase I and Phase II of the Project, as contractors, whether union or non-
may have to draw not only from local union hiring halls, but also from non-local union
halls, where the workforce may be even more of an unknown quality.

Additionally, open shop contractors will claim that their ability to fire employees at will is
a real benefit; if a worker is not up to par, he can be readily dismissed. With unions, PLA
opponents say, there is the widely-held belief and perception that once a worker becomes a
union member, despite a possible lack of real skills, work ethic or other attributes prized
by employers, that worker remains a member of the union and remains on the union hiring
lists. Thereafter, that worker’s utilization is determined not by his or her skills, but by his
or her position on the hiring list, which operates on a “first in, first out” basis. Thus, open
shop proponents claim, depletes employers of the ability to choose those workers they
know will perform better.

Last, PLA detractors point to union work rules, claiming they are often outdated and
archaic. By way of example, open shop contractors indicated that union work rules limit
such things as the number and/or type of machines a union operating engineer can use in
any given workday and often prohibit union tradesmen from performing differing tasks as
needed. These work rules, which are imposed when a PLA is enacted, favor the use of
open shop contractors, as they are able to utilize workers in varied roles as needed and
appropriate, giving them, they claim, an important cost savings edge, as they can trim
workforces to the minimum required to perform needed work. Accordingly, their bids for
public work can be lower, offering savings to taxpayers with no reduction in the quality or
timing of work performed, if a PLA is not utilized.
IV. ERIE COUNTY COURTHOUSE PROJECTS

Phase I – Looking Back

Our research, which included interviews with Phase I contractors, the construction manager’s representatives and County personnel gave the overall impression that Phase I of the Project was completed efficiently and competently. No reports of major labor dysfunction or problems were reported; in fact, there was only one arbitration held, which resolved matters satisfactorily. Further, the information provided to E&Y indicated that Phase I was both on-time and within the established budget (taking into consideration agreed-upon change orders and the like). Despite media reports during construction that seemed to indicate the Project was as much as 50% over the original 1996 budget estimate ($12.7 million), County executives explained that the scope and timing of the Project had changed considerably. By way of example, the size of the building changed during planning from five stories to seven stories, and construction did not begin until 1999.

However, with respect to the budget set for the project, it could not be determined whether individual bid packages, of which there were 19, were bid above or below the County’s estimates, as the initial estimates could not be provided by the construction manager or the County. Information garnered through conversations with County public works representatives suggested that some of the package bids varied greatly from the original estimated amounts on a per package basis. However, in total, the overall price for the Project fell close to the County’s estimated cost of construction.

Notwithstanding Phase I’s ostensible status as having been completed within budget, some matters of considerable importance came to light during our investigation. Specifically, an analysis of those who picked up bid packages (drawings, specifications, etc.) and those who submitted bids revealed a rather severe paucity of bidders on some packages.

A rather startling example was identified in the "General Trades" bid package, which was the largest package let in Phase I at $4.8 million which represented 16.6% of the total cost of construction. Of the 34 firms who picked up Bid Package 15 – General Trades, six were identified as prime contractors; conversations with County personnel revealed that three of those who picked up bid packages and identified themselves as prime contractor would, in fact, be acting in subcontractor roles. Perhaps not surprisingly in retrospect, all three prime contractor plan-holders were union affiliated.

| Louis P. Ciminelli | Union | Prime |
| Scrufani Construction | Union | Prime |
| Sicoli & Massaro, Inc. | Union | Prime |

1 E&Y attempted to gather this information, and made requests of both County executives and Turner Construction, the construction manager for Phase I. However, we were told that such records only existed in temporary form and had been destroyed, in accordance with County directives. As such, no direct evaluations or comparisons of that information was possible.
Of the bidders who picked up the General Trades bid package, there were two actual bids on Package 15 - submitted by Louis P. Ciminelli and Sicoli & Massaro, Inc., both union contractors. The contract was awarded to Louis P. Ciminelli. It has been E&Y's experience in other project settings that only two bids on a package of this size does not represent enough bidder participation to award the contract, and would require rebidding.

As for merit contractor participation on the General Trades bid package in Phase I, we discovered that there were approximately six to 12 merit contractors who were of sufficient size and resources (and had sufficient bonding capacity) to bid on this package. When you consider that six union primes picked up this bid package, and that there were at least six merit primes who could have picked up Bid Package 15, it equates to an equal potential bidder population of union and non-union bidders.

It was telling to learn that none of the merit primes picked up Bid Package 15, and that out of a 50/50 population only union primes bid on the General Trades package. The graph below represents the actual outcome.

**Potential and Actual Participation on Phase I Bid Package 15**

With respect to the general trades work for Phase II, it was pointed out to E&Y that there is only one local union contractor that is capable of performing this work, but there are several merit shops capable of bidding/performing the work. If the County desires that local workforces be utilized on the Project (not a requirement nor a prohibition under the PLA), local merit shop contractor participation must be encouraged.

By way of comparison, the items of work that would have made up the General Trades bid package for the $65 million construction project at Ralph Wilson Stadium drew four times as many bidders. That project did not operate under a PLA.

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*Since the actual populations of potential merit and union participants in western New York could not be positively identified, the 50/50 split indicated above is a conservative estimate of the potential bidders in the area based on E&Y’s research.*
The graph below represents the presence of the additional Ralph Wilson Stadium bidders for those work items encompassed by the Phase I General Trades bid package.

The majority of the other bid packages in Phase I drew higher bidder participation, and were closer to the participation rates on the Stadium project. However, our research drew the conclusion that it was the General Trades bid package on Phase I that was expected to have the highest open shop participation and was, therefore, be most impacted by the use of a PLA.

*Note that the Ralph Wilson Stadium project had a different organization of bid packages. This project did not have a General Trades package, but instead had the work items present in the Phase I General Trades package split into smaller sub-packages. For the purposes of this study, packages on the Ralph Wilson Stadium project were combined to so as appropriate analysis could be performed.*
Erie County Courthouse Construction Projects
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This being said, it is still quite interesting to compare the number of Phase I bidders with the number of Ralph Wilson Stadium bidders for the three contracts in Phase I with the highest values (after the General Trades package which was the highest at $4.8 million). The Phase I bid packages are listed below:

<table>
<thead>
<tr>
<th>EC Phase I Bid Packages</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>BP-11 Electrical</td>
<td>$3,316,445</td>
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<tr>
<td>BP-10 Mechanical</td>
<td>$3,276,008</td>
</tr>
<tr>
<td>BP-01 Sitework*</td>
<td>$3,214,212</td>
</tr>
</tbody>
</table>

The following graph visually represents the comparison:

Comparison of Number of Bidders on Three Highest Value Contracts

An inference can be drawn from the example of the amount of Phase I bidders and the non-PLA Stadium project. The General Trades package on the Ralph Wilson Stadium project drew four times as many bidders while the Electrical, Mechanical and Sitework packages drew 50%, 33%, and 33% more bidders, respectively. While not conclusive, that comparison, coupled with the overwhelming majority of interview respondents' views on whether open shop contractors will bid on Phase II work, it is apparent that at least one of the primary effects of the PLA was the depression of competition among bidders.

It should be noted that in projects involving very large mechanical, electrical and plumbing packages, we found that it is primarily the larger union contractors in Erie County that are able to bid on and carry out the work associated with those contracts.

The PLA in effect during construction of Phase I mandated a 50/50 ratio of open shop and union labor for merit shop contractors that were to work on the Project. This was reported to be a negotiated concession on the part of the local unions, as some projects that utilize PLAs require much higher ratios of union labor. In addition, the unions reportedly made

* In this section only, we have renamed the Phase I bid package originally titled “Excavation & Foundations” to be “Sitework”.

16
Some other concessions, in the form of a waiver of industry fund payments by open shop contractors (with the exception of the elevator operators).

The contributions waived were (on a per hour basis):

1. Asbestos workers $0.01
2. Carpenters $0.10
3. Bricklayers $0.10
4. Electricians $0.17
5. Ironworkers $0.04
6. Operating Engineers $0.10
7. Roofers $0.06
8. Sheet Metal Workers $0.14
9. Painters $0.05
10. Sprinkler Fitters $0.07
11. Plumbers $0.18

The average cost is calculated to be approximately $0.093 per man-hour of work.11

Phase I did not incur any disputes that stopped work on the Project, and there was reportedly little "hassling" among the union trades or between the largely union labor force and the very little open shop labor that worked on the Project. There was one dispute that arose to the level of an arbitration, which involved an open shop contractor and its interpretation of the requirement to pay "core financial membership" fees, which was ultimately resolved in favor of the unions.

One of the goals set for the Phase I PLA was to help alleviate disruption to the courts and the public. Success on this count is difficult to determine, at best. Since Phase I was a new construction project built on the site of a former parking lot, any potential union labor actions, such as picketing, would have been largely out of the public's way and would likely not have impacted either the courts or the public. Since there were very minimal labor disputes during construction of Phase I (only five grievances and one arbitration), it is difficult to definitively say that it was the PLA that caused the job to run smoothly.

Since the construction manager performed admirably while executing the construction of Phase I, and appears to have been largely responsible for the progress of Phase I without any major difficulties, it may be that its presence and protective actions, not the PLA, is responsible for the smooth construction and minimization of disruption. Not to be discounted is the fact that there was very little non-union labor working on the project and any union/non-union strife would have been minimized anyway. Last, the history of Erie County labor relations is relatively free of turbulence and has long been unmarked by major labor disputes. Taken together, it is entirely possible that Phase I would not have caused any disruption to the courts and the public in the absence of a PLA. As a result, it cannot be conclusively determined that the PLA met its goal of minimizing disruption to the courts and public.

11 Erie County Courts Master Plan Implementation - Project Labor Agreement between The Building and Construction Trades Department, AFL-CIO; The Building and Construction Trades Council of Buffalo, New York and Vicinity, AFL-CIO: Plumbers and Pipefitters Local Union No. 22; and Sprinkler Fitters Local Union No. 669 and Cordiello-Cooper, Inc.; Turner Construction Company, Article XII, 11

[Image 14x440 to 597x1217]
In summary, it was found that Phase I of the Project ran very well, with little in the way of labor disputes, no disruption to the courts or the public and an on-time/on-budget record. Whether it was the PLA that was in fact responsible for the good progression of the Project is uncertain. There are however many indicators that point to markedly decreased competition as a result of the imposition of a PLA on Phase I. That impact is real and discernible and should be considered when looking forward to Phase II.

Phase II - Looking Ahead

Current State

The construction of Phase II of the Project will be fundamentally different than the construction of Phase I. The obvious difference is that Phase II is not new construction, as Phase I was, but is instead renovation work. Further, a major portion of the renovation work to be done is unique in nature, as the “Old County Hall”, dating from approximately 1885, is a historically significant building and will not be substantially altered. The other construction to be undertaken in Phase II involves renovation of the “Annex” building, which is connected to Old County Hall, and a four-story office building, which will become the County’s law library.

Also making the construction of Phase II substantially different will be that the Old County Hall, which will house Surrogate’s Court, the County Clerk, the County Legislative Offices and Chambers and similar functions, will remain partially occupied and utilized during construction. Substantial juggling of County activities will take place to accommodate construction and extensive, tightly scheduled work phasing is expected.

The current contracting plan shows 19 major contracting work packages, but it is our understanding that the actual number of bid packages may be twice that amount. This is due, in part, to the County’s stated desire to encourage smaller shops and minority and women-owned contractors to participate in the project. As the value of work packages rises, as it so often does on government projects, such that smaller shops may not have sufficient bonding capacity to bid on or undertake the work.

The nature of renovation of historic structures indicates that of the contractors required, at least some will be smaller specialty shops with expertise in the unique nature of that type of renovation. One example provided to E&Y was in the renovation and repair of the existing skylight windows, which will not be replaced, but instead will be repaired and renovated. Since the windows date to the time of the Old County Hall’s construction, unique craft skills will be required to efficiently undertake this portion of the work.
Conclusions

Like any other project owner, Erie County has certain goals they strive to achieve with respect to each construction project undertaken. Given the County's obligation to spend public dollars responsibly, among the most important of these goals is that of securing the best project for the lowest reasonable price. Accordingly, the primary task of our study was to determine whether or not a Project Labor Agreement supports a "legitimate business purpose" and fosters the goals that were established for it.

One of the key thoughts that should be taken from this report is the understanding that the issue of whether or not to utilize a PLA is not one of organized labor versus open shop labor. Additionally, recognition must be made of the obviously partisan nature of both PLA boosters' and detractors' arguments.

PLA opponents we spoke with and anti-PLA materials we reviewed sometimes attempted to pin the blame for increased project costs or extended schedules solely on the fact that the project(s) were completed under a PLA and/or with union labor. E&Y recognized the faulty reasoning inherent in those arguments, and noted that it is often scope changes, design changes, owner changes or differing site conditions that cause projects to exceed their original budgets and/or defeat anticipated time frames. To claim, in the absence of verifiable empirical evidence, that a PLA is solely to blame is erroneous.

Similarly, PLA proponents have pointed to PLA-governed projects that were completed on time/on budget and proclaimed that the reason for the same is the use of a PLA and union labor. Similar claims were made with respect to minority and women participation on projects. Little or no recognition was given to other equally or more important factors that would help a project succeed in meeting its schedule and budget goals. Specifically, the nature of the project, the absence of substantial scope changes, design changes, owner changes and differing site conditions will also contribute to success. Likewise, a knowledgeable and competent construction manager and a well-trained and motivated workforce, whether union or not, will contribute greatly to project successes.

Question Presented

After beginning our research, the question that E&Y found itself confronted with when evaluating the effects of utilizing a PLA on Phase II of the Project could be stated as:

Whether the use of a PLA discourages competition, resulting in a detrimental effect to taxpayers and whether the use of a PLA diminishes the likelihood of qualified and appropriate craft and tradesmen participating on the Project.

Competitive Bidding

The goals of competitive bidding are to: "guard against favoritism, extravagance, fraud and corruption, to prevent the waste of public funds, and to obtain the best economic result for the public". Additional objectives include "stimulating advantageous marketplace competition" as well as finding the "lowest responsible bidder whose offer best responds in quality, fitness, and capacity to the particular requirements of the required work". It has
been proven time and again that a paucity of bidders drives prices higher; conversely, multiple bidders, engaging in strong competition, ensure each bidder to trim his bid as much as possible in hopes of securing the work up for bid. This causes prices to be reduced.

Our research indicates that the presence of a PLA on Phase II will limit the amount of bidders for those work packages that typically draw open shop contractors. This conclusion can be drawn through examination of the very low number of bidders on the Phase I general trades package and comparison with similar projects. This empirical evidence is supported by E&Y’s telephone interviews conducted with local union and merit shop contractors. Our research found that restrictive union hall hiring practices, the payment of additional money for union dues or fees, and rigid, outdated union work rules as the primary reasons why many contractors refuse to become involved with PLA projects. Even some union trade organization representatives we spoke with conceded that one of the primary purposes of a PLA is to stifle open shop competition against union workforces.

Union advocates will quickly point out, and rightly so, that the PLA does not expressly limit open shop bidding or participation in any project it governs; however, we found that the practical effect of open shop contractors’ opinions and ideas, whether empirically based and justifiable or not, is that the PLA stifles and diminishes competition.

Project Costs

Utilizing the PLA on Phase II could have significantly greater impact than its use on Phase I. The PLA governs Saturday work make-up days, so that if a day could not be worked during the week, for whatever reason, that time can be made up on a Saturday at no increase in hourly wage costs. Of course, almost all work in Phase II is expected to be interior work, so the likelihood of inclement weather or similar hazards canceling work will be very small. In Phase I, which did entail substantial outside construction work, E&Y was informed that workers still only worked less than five Saturdays. All things considered, this “benefit” may be of little real value for Phase II.

Similarly, the PLA governs shift work on the Project. It provides that shift work, if needed, will be done at standard rates, with no premium for 2nd or 3rd shift work. Phase II is unique in the fact that it may require work during off-hours due to in-place tenancies, tight work phasing, unforeseen work conditions, etc. There is the potential for, but not the guarantee of, some amount of cost savings. No savings relating to this provision were realized in Phase I.

Building on the inferences and conclusions made with respect to competitive bidding issues, as well as additional research into past project histories and statistics, it can be deduced that fewer bidders result in higher overall bids. Since the County’s projects are bid at prevailing wage, in accordance with New York State law (which we found to be nearly equal to union wage rates), the open shop/union shop wage differential is not an issue in higher project costs.
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Project Schedule / Labor Unrest

There is no concrete evidence to support the viewpoint that a PLA ensures the timely completion of a construction project, as PLA proponents suggest. While a PLA does prohibit strikes and work stoppages by project labor, the labor climate in Erie County has been free of such problems for a considerable amount of time: in fact, it was reported to Ernst & Young that the last strike was sometime in 1969, over 30 years ago. Further, the mere fact that unions working on a given project have entered into a PLA is no guarantee of the absence of strikes. It was unclear to Ernst & Young, given the labor climate in the County, why a PLA was initially considered in the first place.

The PLA includes terms governing dispute resolution procedures which were put in place to help minimize job site delay associated with project grievances. All workers must abide by the dispute resolution provisions that dictate that scheduled work will not stop, resulting in nominal additional cost associated with extended general conditions, additional security, and/or secure gating. This clause was of minimal utility during Phase I of the Project, as only five grievances were presented, and only one of those led to arbitration.

Our research indicated that the majority of construction projects in the Erie County area that incorporate both union and open shops run smoothly with little contention between the two groups. This logically leads to the conclusion that the Phase II project schedule should not be impacted by the presence or absence of a PLA. Often, it is the supervision and presence of a strong construction manager that has a more direct hand in controlling labor on-site, helping to resolve disputes, and bringing the project in on schedule.

Nonetheless, our investigation found that the Phase II construction sites would be "targeted" by local unions in the event that a PLA was not of course, the large attendant amount of union labor is not utilized. Further, almost all others interviewed, union and non, perceive that a public project of such a profile and in such a central location as the Phase II buildings will be the subject of considerable union activity.

Project Quality

There is no quantitative evidence that suggests a difference in the quality of work performed by union or open shop contractors. The United States Bureau of Labor Statistics ("BLS") reports that approximately 80 percent of all construction workers are not affiliated with a union organization, which means that a large percentage of all work is performed by merit shop contractors. In fact, the BLS has estimated that about 75% of all construction projects nationwide are completed with non-union labor. Additionally, in Erie County, no differences in quality were discovered or reported on projects where union and merit shop contractors were employed jointly.

Project quality on Phase II would likely be adversely impacted by the use of non-qualified contractors to perform the required historical renovation work. Accordingly, it is

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12 In 1999, union carpenters who were a party to a PLA and who were working on the San Francisco Airport expansion construction project nevertheless struck the job over a dispute concerning wages. They were joined in their labor action by the non-union plumbers, painters and electricians working at the site.
imperative that the County facilitate opportunities for the generally smaller craft and trade shops that can perform this work.

Opportunities for Minorities and Women

E&Y does not believe this to be an issue that is impacted by the presence or absence of a PLA. During our research, we were able to conclude that this aspect of Phase I was influenced more fully by the ability of the construction manager to proactively educate and attract minority and women labor about and to the project. The construction manager's efforts in this regard were exemplary, and included public outreach programs and "mixers" where minority and women business enterprises were invited to learn more about the construction project and the provisions of the PLA that governed Phase I. Also of critical importance with respect to this aspect of the Project was the County-mandated requirement that there be a dedicated resource to oversee minority and women participation.

Project Access

A part of the stated rationale for the use of a PLA is to ensure unfettered access to the Courts and other County offices during construction. While the PLA does not in any way guarantee such access, it may help to minimize the likelihood of a strike or lockout, which could have the effect of dissuading those who wished to access a building.

Project Safety

Union contractors often claim they have a higher safety rate than open shops, but factual evidence supports the idea that merit shop contractors also maintain safe work places. Statistics maintained by the Occupational Safety and Health Administration ("OSHA") demonstrate that merit shop construction contractors have better safety records than their union counter-parts, at least with respect to fatalities. (See OSHA's Analysis of Construction Fatalities, Nov. 1990). It has been reported that newer studies confirm the safety record of merit shop construction. Merit shop contractors have also won the majority of recent safety awards given out by The Business Roundtable. No western New York specific information relating to project safety was identified.

Admittedly partisan analyses indicate that "many jurisdictions have found that costs decrease, competition increases, the ability to hire local skilled labor increases and projects go forward in a more timely manner when PLAs are abandoned." (See Associated Builders and Contractors, Inc. ("ABC") Union-Only Project Labor Agreements: The Public Record of Poor Performance (ABC 2001)). That report, prepared by ABC's general counsel, cites previous studies of Erie County-area projects, including the Roswell Park Cancer Center and the Northwest Academy School project and concludes that PLAs, among other things, increase project costs and decrease competition. 13

13 The findings presented in ABC's analysis indicated that a comparison of Roswell Cancer Center bid packages released under the PLA and those without any union-only requirement showed that costs of construction under the union-only PLA were 48% higher than without the PLA and projects not subject to the union-only PLA were 15% under budget. It also indicated that the Northwest Academy school project, bid under a PLA, the bids received were in excess of 20% over budget.
V. RECOMMENDATIONS AND THE WAY FORWARD

Recognition must be made that there are a number of broad assumptions inherent in the evaluation of PLAs. As each construction project is a unique undertaking in a unique market. Since the practices, attitudes and policies of unions vary so widely on an area-by-area basis, assessments made with respect to the Erie County Courthouse Construction Project may not be applicable elsewhere. In particular, E&Y learned that Erie County’s neighbor, Niagara County, is vociferously union and may, in fact, be one of the most actively union counties in the country. Accordingly, the information and assessments garnered from previous evaluations are likely not applicable with respect to the Project.

Our Recommendation

Taking into consideration the myriad of factors discussed above, it is our opinion that the use of a PLA on Phase II will discourage competition, resulting in a detrimental effect to taxpayers and would diminish the likelihood of appropriate craft and tradesmen participating on the Phase II of the Project. E&Y believes that the use of a PLA on Phase II will result in union labor exercising near monopoly control over the Project site and will negatively impact competitive bidding. We have found no discreetly discernable economic benefit to utilizing a PLA, but there is substantial evidence that indicates that the use of a PLA can have negative effects by excluding a large percentage of the construction workforce. Our research revealed that as much as 80 percent of the construction workforce is not affiliated with unions and does not desire union representation. Accordingly, E&Y recommends that Erie County discontinue the use of the PLA on Phase II based on evidence that a PLA does not foster open competition and competitive bidding.

Of all the options we have considered, terminating the PLA on Phase II is probably the most difficult from a political perspective and harbors the most risk related to the access and timely completion of Phase II. In the political arena, the County administration risks being portrayed as an anti-labor administration and may lose support of some of the union workforce. Additionally, the threat of union targeting of the Phase II jobsite is very real. It was suggested to us that there may become a need for additional site security as well as separate entrance gates and delivery docks for union and non-union workers. Without a PLA in place to discourage picketing, it is very likely that the non-union entrance may become the staging areas for union demonstrations and protests. In the event of union activity, it can also be assumed that the Project may become the object of considerable media scrutiny, as the Phase II buildings are in a high profile, centrally located downtown site.

It should be noted that union participation in Phase II of the Project should continue to be considerable, as our research indicates that of the qualified potential bidders on the anticipated larger bid packages (mechanical, electrical and plumbing work), the majority of those contractors are union shops. This alone, in the absence of a PLA should placate the unions’ desire to see considerable union labor utilized on the Project.
In order to minimize these potential negative impacts, we believe the County should focus on alternative measures within their direct control that may bring about some positive influences. It is E&Y's experience that the level of control exerted by a proactive and knowledgeable construction manager is largely responsible for project successes. We believe the County has already addressed this issue through their selection of the Phase II construction manager. If applicable, the County may wish to consider including allowable language in the bid specifications relating to certain standards to which they will hold Project contractors that can accomplish many of the PLA's purported goals. These options are detailed below.

Overall, this recommendation will not be an easy one to see through, but it is our opinion that the Project and the taxpayers will benefit greatly from the enhanced competitive bidding that will likely be seen without the presence of a PLA. The County will be much more likely to find the "lowest responsible bidder whose offer best responds in quality, fitness, and capacity to the particular requirements of the required work" without the presence of a PLA in Phase II.

**Alternative Courses of Action**

Based on our research and knowledge of construction practices, E&Y sees a number of alternative ways Erie County can go forward with Phase II of the Courthouse Project and any subsequent construction projects should it be decided that our recommendation is not the chosen course of action. We have listed these alternative options below for your consideration:

- **Renegotiate or Modify Phase I PLA for Use in Phase II**

  This option enables the County to continue down a path of minimal resistance while still accomplishing their objectives. Since a PLA was in place in Phase I, many will expect it to govern Phase II as well and, if it does not, it was suggested that the unions would resist by shutting down the job site. Renegotiating or modifying the existing PLA allows the County to placate the unions while addressing County objectives and adding terms that are more beneficial to taxpayers. Furthermore, the County administration may obtain the political benefit of not being perceived as an anti-labor administration, and may have greater leverage in negotiations with the unions regarding deterring or modifying outdated terms.

  It was mentioned during our interviews that this option may work to benefit everyone involved by continuing to refine the PLA developed for Phase I. We had many discussions revolving around the negotiations that went into the formation of the PLA for Phase I including union concessions and particular topics that were specifically addressed in this PLA as opposed to its predecessors. While the negotiations of the PLA terms were difficult at best, those involved feel that the Phase I PLA is much fairer than past PLAs in Western New York. One interviewer was of the opinion that if the PLA evolves to the next level, it will be
seen as a true "work" agreement instead of a "union work" agreement. This individual believes that this would remove the negative stigma attached to PLAs and perhaps foster the goals of competitive bidding by not drawing the typical unenthusiastic reaction from many contractors.

On the other hand, the County should consider the timeframe impact of undertaking a renegotiation. It was expressed that any renegotiation would add tremendous delay to the start of Phase II, at a cost to the County of approximately $100,000 per month of delay beginning January 2002 (quoted by County representative). Additionally, there is the question of what impact continuing even a modified PLA will have on subsequent projects and whether the County will then be forced to continue to use the evolved PLA on all future projects. Evaluation of this aspect should be given all due consideration.

- **Continue Use of Phase I PLA for Phase II**

Because Erie County may have established the expectation that Phase II will continue under a PLA because of its use on Phase I, it may be impossible to discontinue the PLA on Phase II without serious consequences. Under this mode of thinking, it may be beneficial to continue the use of the Phase I PLA under Phase II as a form of insurance for the Project simply because of its presence on Phase I. The continued use of the PLA for Phase II is by far the easiest way to proceed. and ensures the County that the unions will not create unrest because of a decision they perceive as unfavorable. This option also serves to help protect the access of court personnel and ensure that court proceedings can continue to operate during the renovation process without possibly being interrupted by promised union picketing or other actions. Also, without this type of action by the unions, the County is almost guaranteed to be free from unwanted media coverage.

Additionally, our research indicates that nine craft union contracts expire next year and will have to be renegotiated. The presence of a PLA on Phase II, which is expected to reach completion in early 2003, will lessen the County’s exposure to work stoppages and picketing that could be spawned by the negotiation of new union agreements. Under these circumstances, it is possible that the PLA may provide the County with no-strike protection when it is needed. Also to be considered are the projections that were made when the Phase I PLA was under consideration. That approximately 80% of the benefit of utilizing a PLA on the Project was expected to be realized on Phase II, if at all.

However, when other equally important factors, such as competitive bidding and project costs, are considered, this option becomes less appealing. Through our research, we believe it is reasonable to suspect that a PLA in place on Phase II will drastically limit bidder participation. In turn, a limited number of bidders on a project seems to most often result in inflated bids, which logically leads to higher total construction costs.
Use PLAs for Renovation or Unique Projects Only

Much of the benefit to be gained by utilizing a PLA (such as the one in place for Phase I) lies in the calculation of 2nd and 3rd shift labor costs. Workers required to be present for 2nd and 3rd shift work are paid at a higher rate than those workers on a typical day shift: however, the PLA for Phase I was negotiated to address this possible cost inflator by dictating that there would be no premiums paid for additional work shifts.

Looking at Phase I, we saw that this negotiated benefit of the PLA did not have much opportunity to be realized, as very little 2nd and 3rd shift work was required. In fact, it was suggested that 80 percent of the benefit of this particular term of the PLA is to be achieved under Phase II, where the nature of the work may be more likely to result in premium shift schedules. Renovation work is quite different from new construction, in that it is often impossible to know exactly what may be encountered during the project. In other words, a worker may be planning on installing ductwork in a particular fashion only to find that the as-built drawings were incorrect, and on-site modification and redesign is necessary. Unforeseen circumstances, such as the example above, often result in an increase in the amount of work to be performed, which may extend the schedule for that work unless 2nd and 3rd shift workers are employed. Additional shift work may also come into play during Phase II due to the continued operations of the courts during the renovation work as well as the tight phasing of the work schedule. Depending on the amount of 2nd and 3rd shift labor that is necessary, a benefit may be derived from not having to pay additional shift premiums. Therefore, there may be a case for using a PLA on renovation work or other unique projects only, and not on typical ground-up new construction.

In response to this, we find there may be other avenues available that deliver the same benefit without the limiting of competition that a PLA brings about. Our research suggests that public agencies can insert certain terms into their bid specifications, such as a requirement to pay prevailing wage, hire locally, employ minorities, guarantee no strikes, and not allow 2nd and 3rd shift premiums. With such wording in place in the bid documents, contractors awarded the project work packages are bound to the established terms, and the County will recognize the claimed benefits of a PLA without diminishing competition.

Continue Use of Phase I PLA in Phase II & Renegotiate Subsequent PLAs

This option addresses concepts and issues stated in the options above, and offers a practical work-around of a possibly difficult position for the County. As discussed above, the County may have inadvertently created the expectation that Phase II will continue under a PLA because of its use on Phase I, and not doing so may result in political and jobsite turmoil stemming from PLA supporters.
Continuing the Phase I PLA in Phase II gives the County a high level of assurance that there will be no union-associated workforce unrest or protests related to taking away what is already expected -- the continuation of the PLA on Phase II. Giving the unions what they anticipate (and already consider a "done deal") results in less likelihood of union work stoppages and/or job site targeting, which speaks directly to the County's goal of unfettered access for court personnel. This option also helps to ensure, though does not promise, that the Project will be completed within the scheduled timeframe.

Additionally, the County administration may be perceived as pro-labor, and may therefore have greater leverage in renegotiating PLAs for subsequent projects. This gives the County the opportunity to insert terms that speak more directly to their own concerns and issues, while modifying and/or deleting costly union terms. Also, this creation of fairer work agreements for future projects may lend itself to lessening the negative connotation present with current PLAs.

However, it is our opinion that the use of the Phase I PLA on Phase II will limit competition by discouraging open shop bidders from participating, which may in turn escalate bid package costs. And even though the County will strive to create a fairer work agreement for future projects, open shop contractors may still perceive PLAs as "union work" agreements. This belief, whether based in fact or not, will only serve to depress competition on future County projects as well.
VI. APPENDIX

A. Interview Resources
B. Executive Order 13202
C. OSHA Chart - Fatalities
## Successful Interview Resources

<table>
<thead>
<tr>
<th>Person Interviewed</th>
<th>Title/Organization</th>
<th>Date(s)</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Michael A. Sudd, R.A.</td>
<td>Construction Project Mgr. – County of Erie</td>
<td>6 August 2001</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>23 August 2001</td>
<td></td>
</tr>
<tr>
<td>Jeffrey P. Zack, P.E.</td>
<td>Construction Project Mgr. – County of Erie</td>
<td>6 August 2001</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>23 August 2001</td>
<td></td>
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<tr>
<td>James C. Hearn, R.A.</td>
<td>Director, Building Projects – County of Erie</td>
<td>6 August 2001</td>
<td></td>
</tr>
<tr>
<td>Maria Lehman, P.E.</td>
<td>Commissioner - County of Erie</td>
<td>6 August 2001</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>23 August 2001</td>
<td></td>
</tr>
<tr>
<td>Ronal A. Krukowski</td>
<td>Project Executive – Turner Construction</td>
<td>6 August 2001</td>
<td>Construction Manager, Phase I</td>
</tr>
<tr>
<td></td>
<td></td>
<td>21 August 2001</td>
<td></td>
</tr>
<tr>
<td>Paul R. Neureuter</td>
<td>Vice President - Ciminelli – Cowen Construction Mgmt.</td>
<td>6 August 2001</td>
<td>Construction Manager, Phase II</td>
</tr>
<tr>
<td>Donald V. Brown, Jr.</td>
<td>President – D.V. Brown &amp; Associates. Inc.</td>
<td>6 August 2001</td>
<td>Union Shop Mechanical Contractor on Phase I</td>
</tr>
<tr>
<td>Kevin T. Cannan</td>
<td>President – A.A.C. Contracting</td>
<td>6 August 2001</td>
<td>Open Shop Environmental Company</td>
</tr>
<tr>
<td>Lou Bass</td>
<td>Phase I Superintendent – Turner Construction</td>
<td>21 August 2001</td>
<td></td>
</tr>
<tr>
<td>Steve McGlone</td>
<td>Phase I Project Manager – Turner Construction</td>
<td>21 August 2001</td>
<td></td>
</tr>
<tr>
<td>Mike Flupartick</td>
<td>Ironworkers Business Agent – Erie County – Chair of Econ. Dev. Council</td>
<td>23 August 2001</td>
<td></td>
</tr>
<tr>
<td>Dan Boody</td>
<td>Head of Building Trades Construction Council – Union Local</td>
<td>23 August 2001</td>
<td></td>
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<tr>
<td>Dave Quackenbush</td>
<td>Quackenbush Co., Inc.</td>
<td>6 August 2001</td>
<td>Union Shop HVAC Contractor</td>
</tr>
<tr>
<td>Jeffrey Zogg</td>
<td>Head of General Building Contractors of NY State Association</td>
<td>16 August 2001</td>
<td>Organization primarily represents union members (78%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2001</td>
<td></td>
</tr>
<tr>
<td>Person Interviewed</td>
<td>Title/Organization</td>
<td>Date(s)</td>
<td>Notes</td>
</tr>
<tr>
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</tr>
<tr>
<td>Gary Stil</td>
<td>Owner- Union Concrete</td>
<td>20 August 2001</td>
<td>Union Shop Concrete Contractor-primarily heavy highway</td>
</tr>
<tr>
<td>Ken Berger</td>
<td>Vice President, Finance – Summit Construction Group</td>
<td>15 August 2001</td>
<td>Open Shop General Contractors</td>
</tr>
<tr>
<td>Scott Zylka</td>
<td>Regional Director – Associated Builders &amp; Constructors</td>
<td>13 August 2001</td>
<td>Open Shop Trade Organization</td>
</tr>
<tr>
<td>Ed Beavers</td>
<td>Wood Specialties, Inc. – Estimator</td>
<td>22 August 2001</td>
<td>Open Shop Architectural Millwork</td>
</tr>
<tr>
<td>Joel Giambra</td>
<td>Erie County Executive</td>
<td>23 August 2001</td>
<td></td>
</tr>
<tr>
<td>Judy Fisher</td>
<td>Erie County Legislator-</td>
<td>L/M 23 &amp; 28 August 2001</td>
<td>Has name of merit shop to interview</td>
</tr>
<tr>
<td>John Loffredo</td>
<td>Former Erie County Commissioner of Public Works</td>
<td>28 August 2001</td>
<td>Implemented Phase I PLA &amp; Negotiated PLA</td>
</tr>
<tr>
<td>Rob Campany</td>
<td>Executive President- Bernier, Carr &amp; Associates</td>
<td>29 August 2001</td>
<td>Jefferson County, NY courthouse project</td>
</tr>
<tr>
<td>Person</td>
<td>Title/Organization</td>
<td>Notes</td>
<td></td>
</tr>
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<td>---------------</td>
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<td>--------------------------------------------</td>
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<tr>
<td>No contact name</td>
<td>Picone Construction Group</td>
<td>General Contractor</td>
<td></td>
</tr>
<tr>
<td>Tom Hadala</td>
<td>The Hadala Group</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Doug Gianforoni</td>
<td>Marco Erectors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joan Yang</td>
<td>Rand &amp; Jones Enterprises</td>
<td></td>
<td></td>
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<tr>
<td>No contact name</td>
<td>Buffalo Sheet Metals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gina Pagan</td>
<td>Infinity Architectural Window Systems</td>
<td>Window Specialists</td>
<td></td>
</tr>
<tr>
<td>Jim Jajkowski</td>
<td>Progressive Weatherproofing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>William Truckenbroad</td>
<td></td>
<td>Suggested contact from EC legislator J. Fisher</td>
<td></td>
</tr>
<tr>
<td>Bob Ingerson</td>
<td>Bernier Carr &amp; Associates</td>
<td>Construction Manager for Jefferson County, NY courthouse project</td>
<td></td>
</tr>
</tbody>
</table>
Presidential Documents

Executive Order 12250 of February 17, 2001

Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Property and Administrative Services Act, 30 U.S.C. 471 et seq., and in order to (1) promote and assure open competition on Federal and federally funded or assisted construction projects; (2) maintain Government neutrality towards Government contractors' labor relations on Federal and federally funded or assisted construction projects; (3) reduce construction costs to the Federal Government and to the taxpayer; (4) expand job opportunities, especially for small and disadvantaged businesses; and (5) prevent discrimination against Government contractors or their employees based upon labor affiliation or lack thereof; thereby promoting the economical, expeditious, and efficient administration and completion of Federal and federally funded or assisted construction projects, it is hereby ordered that:

Section 1. To the extent permitted by law, no executive agency awarding any construction contract shall make the date of this order, or obligating funds pursuant to such a contract, shall not unless the awarding Government agency has any construction manager acting on behalf of the Government shall, in its bid specifications, project agreements, or other controlling documents:

(a) Require or prohibit bidders, offerers, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, or on the same or other related construction project(s), or

(b) Otherwise discriminate against bidders, offerers, contractors, or subcontractors for becoming or refusing to become or retain signatures or affiliations to adhere to agreements with one or more labor organizations, or on the same or other related construction project(s).

(c) Nothing in this order shall preclude contractors or subcontractors from voluntarily entering into agreements described in subsection (b).

Sec. 2. Contracts awarded before the date of this order, and subcontracts awarded pursuant to such contracts, whenever awarded, shall not be governed by this order.

Sec. 3. To the extent permitted by law, no executive agency awarding grants, providing financial assistance, or entering into cooperative agreements for construction projects, shall require the bidders, offerers, contractors, or subcontractors for construction contracts awarded after the date of this order by recipients of grants or financial assistance, or by parties to cooperative agreements, or offerors of any construction manager acting on their behalf, shall contain any of the requirements or prohibitions set forth in section (a) or (b) of this order.

Sec. 4. In the event that an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of the foregoing, fails to enter into a contract, grant, or assistance shall, take such action consistent with law and regulation, as the agency determines may be appropriate.
Sec. 5. (a) The head of an executive agency may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of any or all of the provisions of sections 1 and 3 of this order, if the agency head finds that special circumstances require an exemption in order to avert an imminent threat to public health or safety, or to save the national security.

(b) A finding of "special circumstances" under section 5(a) may not be based on the possibility or presence of a labor dispute concerning the use of construction or subcontractors who are nonparties to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees of the project who are not members of or affiliated with a labor organization.

Sec. 6. (a) The term "construction contract" as used in this order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The term "executive agency" as used in this order shall have the same meaning it has in 5 U.S.C. 105, excluding the General Accounting Office.

(c) The term "labor organization" as used in this order shall have the same meaning it has in 42 U.S.C. 2000a(d).

Sec. 7. With respect to Federal contracts, within 60 days of the issuance of this order, the Federal Acquisition Regulatory Council shall take whatever action is required to amend the Federal Acquisition Regulation in order to implement the provisions of this order.

Sec. 8. As it relates to project agreements, Executive Order 12338 of February 1, 1983, which, among other things, revoked Executive Order 12109 of October 23, 1973, is revoked.

Sec. 9. The Presidential Memorandum of June 2, 1987, entitled "Use of Project Labor Agreements for Federal Construction Projects" (the "Memorandum"), is also revoked.

Sec. 10. The heads of executive departments and agencies shall revoke expeditiously any orders, rules, regulations, guidelines, or policies implementing or enforcing the Memorandum of Executive Order 12338 of February 1, 1983, as it relates to project agreements, to the extent consistent with law.

Sec. 11. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right to administrative or judicial review, or any right, whether substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

THE WHITE HOUSE, February 17, 2001
Amendment to Executive Order 13222, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded 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, 46 U.S.C. 471 et seq., and in order to (1) promote and ensure open competition on Federal and federally funded or assisted construction projects; (2) maintain Government neutrality towards Government contractors' labor relations on Federal and federally funded or assisted construction projects; (3) reduce construction costs to the Federal Government and to the tax payer; (4) expand job opportunities, especially for small and disadvantaged businesses; (5) prevent discrimination against Government contractors or their employees based upon labor affiliation or lack thereof; and (6) prevent the inefficiency that may result from the disruption of a previously established contractual relationship in particular cases; thereby promoting the economic, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects, it is hereby ordered that Executive Order 13222 of February 17, 2001, is amended by adding to section 8 of that order the following new subsection: 
The head of an executive agency, upon application of an awarding authority, a recipient of grants or financial assistance, or a party to a cooperative agreement, or a construction manager acting on behalf of the awardee, may exempt a particular project from the requirements of any or all of the provisions of section 1 and 2 of this order, if the agency head finds: (i) that the awarding authority, recipient of grants or financial assistance, party to a cooperative agreement, or construction manager acting on behalf of the awardee, had issued or was a party to, as of the date of this order, all specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions set forth in sections 1(a) or (b) of this order; and (ii) that one or more construction contracts subject to such requirements or prohibitions had been awarded as of the date of this order.

THE WHITE HOUSE,
April 6, 2001.
FIGURE 3.3.7
COMPARISON OF FATALITIES AT UNION VERSUS NONUNION WORKSITES
Data from OSHA's Analysis of Construction Fatalities, Nov 1990