



Associated Builders and Contractors of Western PA
2360 Venture Drive
Gibsonia, PA 15044

August 18, 2015

Tracy Harris
Director of Finance
West Jefferson Hills School District
Administration Building
835 Old Clairton Road
Jefferson Hills, PA 15025

RE: West Jefferson Hills High School Project Labor Agreement (PLA)

Dear Ms. Harris,

I am writing in opposition to the West Jefferson Hills School District (WJHSD) Board's May 26, 2015, requirement of a project labor agreement (PLA) on construction contracts to build the \$100 million high school. The merit shop contracting community is strongly opposed to the use of a government-mandated PLA on this project because the PLA will restrict competition, increase costs, create delays, discriminate against nonunion employees and place merit shop contractors at a significant competitive disadvantage.

About ABC Western Pennsylvania

As you may know, Associated Builders and Contractors (ABC) is a national trade association representing nearly 21,000 chapter members, including general contractors, subcontractors and materials suppliers. ABC of Western Pennsylvania (ABCWPA) is one of 70 ABC chapters across the United States that helps ABC members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which they work. ABC WPA member contractors employ workers whose training and experience span all of the 20-plus skilled trades that comprise the construction industry. Moreover, the vast majority of ABCWPA's contractor members are classified as small businesses. Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value. Experience demonstrates the merit shop philosophy would help the WJHSD provide taxpayers with the best possible construction product at the best possible price.

The majority of ABC member companies, known as *merit shop contractors*, are not signatory to a construction trade union and they have a core workforce of experienced and qualified employees who do not belong to a construction trade union. The Bureau of Labor Statistics' (BLS) most recent report indicates that 86.1 percent of the U.S. private construction industry workforce does not belong to a union.¹

In Pennsylvania, 80.8 percent of the private construction workforce does not belong to a union.² However, many ABC members in the region and across the United States employ union tradespeople, utilize unionized subcontractors and work harmoniously with union tradespeople on jobsites without the need for a PLA mandated by a government agency.

¹ See BLS.gov [Union Members Summary](#). 1/24/15.

² The *Union Membership and Coverage Database*, available at [www.unionstats.com](#), is an online data resource providing private and public sector labor union membership, coverage and density estimates compiled from the Current Population Survey (CPS), a monthly household survey, using BLS methods. The database, constructed by Barry Hirsch (Andrew Young School of Policy Studies, Georgia State University) and David Macpherson (Department of Economics, Trinity

ABCWPA and the local merit shop contracting community is strongly opposed to government-mandated PLA because they are nothing more than anti-competitive schemes that end open and fair bidding on taxpayer-funded projects. PLAs should never be *mandated*; instead, a contractor may *voluntarily* adopt and negotiate a PLA if the firm believes it would help promote the economy and efficiency in which a construction project is delivered to a government agency.³

Problematic Provisions in the WJH High School PLA

We have reviewed the WJH High School PLA attached to the May 20, 2015, memo to the WJHSD Board prepared by Ira Weiss, Esq., and wanted to highlight the following provisions that are particularly objectionable to merit shop companies and their employees in order to illustrate the anti-competitive and costly impact of this PLA:

1. This PLA requires bidders to obtain their craft employees via the union hiring hall system (Article VI, Section 3). This provision has the practical effect, if not explicit intent, of preventing contractors from using their existing trained and productive nonunion craft employees. Unfamiliar union workers may be of unknown quality and may delay time- and cost-sensitive construction schedules that add uncertainty to the ability of a contractor to provide the WJHSD with an accurate proposal and deliver a quality, on-time and on-budget construction product to the WJHSD. Article VI, Section 9, permits nonunion contractors to use a small number (not to exceed 10 percent) of its existing nonunion core workforce meeting certain conditions. This provision does not make a PLA any more palatable to nonunion contractors for a variety of reasons discussed in this letter.
2. In addition, nonunion employees must pay nonrefundable union dues and/or fees (Article VIII, Section 2) and join a union within eight days of employment on the project (Article VI, Section 8) in order to work on this PLA project, even though they have decided to work for a nonunion employer.⁴ This PLA requires unions to be the “sole and exclusive bargaining representative of all craft employees within their jurisdictions working on the project” (Article VI, Section 1). When agreeing to participate in a PLA project, the decision to agree to union representation is made by the employer rather than the employees.⁵ Construction employees often argue that forced unionization and/or representation—even for one project—is an infringement of their workplace rights and runs contrary to their intentional decision not to join a union.
3. This PLA requires contractors to follow union work rules (Article VIII and Article XIII, Section 1), which changes the way they otherwise would assign employees to specific job tasks—requiring contractors to abandon an efficient labor utilization practice called “multiskilling” and instead assign work based on inefficient and archaic union craft jurisdictional boundaries that increase labor costs. Open shop contractors achieve significant labor cost savings through multiskilling, in which workers possess a range of skills that are appropriate for more than one work process and are used flexibly across multiple trades on a project or within an organization. This practice has tremendous labor productivity advantages for contractors, but it is forbidden by typical union work rules and, by extension, PLAs.⁶
4. Article XIII, Section 2, requires contractors to pay into possibly underfunded union-affiliated multi-employer pension plans for any non-core employees used on the project, which may expose merit shop contractors to pension withdrawal liabilities. Depending on the health of a union-managed multi-employer pension plan affiliated with the unions designated in this PLA, signing a PLA could prevent a contractor from qualifying for construction bonds needed to build future projects for WJHSD and other clients and/or lead to future bankruptcy and financial problems.⁷

University), is updated annually. The most recent data lists the union membership of the private construction workforce. There is no data on construction union membership at the local, city or county level.

³ PLAs are authorized under the [National Labor Relations Act](#) (NLRA), 29 U.S.C. §§ 151-169. Sections 8(e) and (f) of the NLRA, 29 U.S.C. §§ 158(e) and (f) make special exceptions from other requirements of the NLRA in order to permit employers and unions in the construction industry to enter into PLAs. The NLRA permits firms to voluntarily enter into PLAs at any time.

⁴The legality of clauses in typical PLAs that require compulsory union membership and payment of union dues and fees to unions by workers in order to work on a PLA project may depend on the state’s Right to Work law status. See [www.TheTruthAboutPLAs.com](#), [Understanding PLAs in Right to Work States](#), 7/20/09.

⁵ Workers normally are permitted to choose union representation through a card check process or a federally supervised private ballot election. PLAs are called pre-hire agreements because they can be negotiated before the contractor hires any workers or employees vote on union representation. The [National Labor Relations Act](#) generally prohibits pre-hire agreements, but an exception in the act allows for these agreements only in the construction industry. In short, PLAs strip away the opportunity for construction workers to choose a federally supervised private ballot election or a card check process when deciding whether union representation is right for them.

⁶ See [www.TheTruthAboutPLAs.com](#), [Understanding the Merit Shop Contractor Cost Advantage](#), 5/17/10.

⁷See [www.TheTruthAboutPLAs.com](#), [The Dismal Future of Construction Industry Multi-Employer Pension Plans](#), 4/23/12 and [Many Construction Industry Multiemployer Pension Plans Remain Severely Underfunded](#), 7/1/13.

5. Article XVI requires nonunion companies to obtain apprentices exclusively from union apprenticeship programs. Participants in federal and state-approved nonunion apprenticeship programs and community or employer training programs cannot work on a job covered by a PLA. This means the area's future construction industry workforce enrolled in qualified apprenticeship programs could be excluded from work in their community if these training programs are not run by unions.⁸
6. Prime contractors and subcontractors will not play a meaningful role in PLA discussions or negotiations, yet one hundred percent of the economic risk of every contract bid and fulfilled under this PLA is on contractors, as they are forced to sign a letter of assent agreeing to all of the terms of the PLA as a condition of receiving a contract and performing work on this project.

This begs the question: Why not eliminate these provisions and therefore eliminate the controversy? The answer: Without these anti-competitive and discriminatory provisions that discourage nonunion contractors from competing for public projects, unions rarely agree to concessions regarding labor peace, work schedules and other provisions that are the cornerstones of the alleged benefits of a PLA. Lawmakers, unions and PLA proponents require these provisions because they ensure union tradespeople enjoy a virtual monopoly building taxpayer-funded projects and these schemes are crucial to reducing competition and giving union contractors an unfair advantage over nonunion competitors. Lawmakers without an agenda to steer contracts to unionized workers and contractors are often surprised that many of the positives of a PLA can be easily required/adopted in the high school procurement and contract documents without the problematic and costly provisions that discourage competition from local merit shop contractors and construction professionals.

Impact of PLA mandate on cost, competition and schedule

The WJHSD's PLA will reduce competition, increase costs and create inefficiencies for contractors and WJHSD procurement officials for a variety of reasons. First, labor costs will increase under this PLA due to inefficient union work rules.

Second, a PLA mandate makes submitting a bid more expensive, as contractors will be faced with increased legal and administrative costs if they are forced to comply with a PLA if they are unfamiliar with operating under these union contracts.

Third, a PLA mandate may limit the ability of the WJHSD to meet small and disadvantaged contracting goals and because the majority of these firms are not unionized and would be disenfranchised by anti-competitive and costly provisions within this PLA.

Fourth, because PLAs discourage competition from qualified contractors, overall bid prices will increase when there is less competition from a smaller pool of qualified (and perhaps less-efficient) competitors.

A recent federal project perfectly demonstrates the anti-competitive and costly problems with PLA mandates on large-scale federal contracts. A U.S. Department of Labor Job Corps Center in Manchester, New Hampshire, was originally bid with a PLA mandate in 2009. After nearly three years of PLA-related delays and litigation, the project was rebid without a PLA. Bid results from February 2013 prove PLAs increase costs and reduce competition. Without a PLA, there were more than three times as many bidders (nine vs. three) and the low bidder's offer was \$6,247,000 (16.47 percent) less than the lowest PLA bidder. In addition, firms who participated in both rounds of bidding submitted an offer that was nearly 10 percent less than when they submitted a bid with a PLA. Without a PLA, a local firm from New Hampshire won the contract. In contrast, the low-bidder under the PLA mandate was from Florida.⁹

ABC has collected more than a dozen similar examples of projects that were bid both with and without PLAs. In every instance, fewer bids were submitted under the PLA mandate than were submitted without it, or the costs to the public entity went up, or both.¹⁰

In addition, a number of studies on school construction in NJ, NY, CT, MA and CA have demonstrated that PLAs increase costs—typically in the range of 12 percent to 18 percent when compared to similar non-PLA projects.¹¹ Most recently, according to a 2011 study by the National University System Institute for Policy Research (NUSIPR), California school construction

⁸See www.thetruthaboutplas.com/tag/training-apprenticeship.

⁹ See www.TheTruthAboutPLAs.com for full details on the project. *Union's Criticism Misses Mark on U.S. Department of Labor's New Hampshire Job Corps Center Project Labor Agreement Scheme*. 9/3/13.

¹⁰ See www.TheTruthAboutPLAs.com *Great Scott: Projects Bid With and Without PLA Mandates Show PLAs Increase Costs and Reduce Competition*, 4/18/13

¹¹ Please refer summary of studies and additional data indicating that PLAs increase the cost of construction available at <http://thetruthaboutplas.com/2012/12/28/plastudies/>.

projects built with PLA mandates experienced increased costs of 13 percent to 15 percent, or \$28.90 to \$32.49 per square foot, compared to projects that did not use a PLA.¹²

In addition to extensive research on the impact of PLAs on school construction, independent research has highlighted the costly impact of PLAs in the Pittsburgh market. The U.S. Department of Veterans Affairs (VA) hired a consultant to produce a study predicting the impact of a government-mandated PLA on a \$40 million VA office building. The May 17, 2011, study recommended against a government-mandated PLA on the project:¹³

For a Pittsburgh, Pennsylvania project at the present time, we see a potential cost risk premium of 3% to 5% if a PLA is mandated. For a \$40 mil. project, this would equate to \$1.2 to \$2.0 mil.

We see that a mandated PLA will reduce sub-contractors and lower the labor pool to the detriment of the project, and potentially add cost; therefore we believe that a PLA would likely not “advance the federal Government’s interest in achieving economy and efficiency in federal procurement.”

Fifth, a PLA requirement could expose the WJHSD to legal challenges against the PLA, which could lead to delays and increased costs.

Due to key reasons against PLA mandates highlighted in this letter, dozens of government localities across the country and 23 states have enacted legislation or executive orders restricting government-mandated PLAs on local, state and state-assisted construction projects.¹⁴

Request to Re-Evaluate PLA Requirement

Because the merit shop contracting community was not consulted during the WJHSD’s limited review of the pros and cons of a PLA mandate, I respectfully request that we have an opportunity to present our concerns to the WJHSD board members at an upcoming meeting. I do not believe the Board was aware of the potential negative impact a PLA requirement could have on this project and the local business community and should be allowed to make a fully-informed decision.

ABCWPA shares the WJSHD Board’s goal of building a quality high school on-time, on-budget and safely through the use of qualified local businesses and skilled local employees. However, we believe that the PLA mandate will do the opposite. We would like to work with WJSHD Board members and stakeholders to create an agreement fair to all parties. ABCWPA encourages WJHSD to proceed with construction projects free from PLA mandates and in the spirit of fair and open competition. Doing so will help WJHSD provide taxpayers with the best possible construction product at the best possible price.

Respectfully,

R. Pete Gum
President

¹² *Measuring the Cost of Project Labor Agreements on School Construction in California*, National University System Institute for Policy Research (Vince Vasquez, Dr. Dale Glaser, and W. Erik Bruvold; 2011)

¹³ See <http://thetruthaboutplas.com/wp-content/uploads/2011/01/VA-Pennsylvania-PLA-Study-by-RLB-Updated-051711.pdf>

¹⁴ See <http://thetruthaboutplas.com/2015/06/15/nevada-becomes-the-23rd-state-to-ban-pla-mandates-ohio-next/> and <http://thetruthaboutplas.com/wp-content/uploads/2015/06/Current-PLA-Bans-Updated-June-2015.xlsx>