OFFICE OF MANAGEMENT AND BUDGET
STATEMENT OF JOHN KOSKINEN
DEPUTY DIRECTOR FOR MANAGEMENT
BEFORE THE
COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

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Mr. Chairman and Members of the Committee:

I am pleased to testify today concerning the President's proposed Executive Order on the use of project labor agreements for federal construction projects.

Let me begin by noting that the President has not yet issued the proposed order. On April 8, 1997, the Office of Management and Budget (OMB) circulated a preliminary draft of the proposed order to federal departments and agencies for their review and comment. A revised draft is now being considered by the departments and agencies for additional comment, so that final drafting of the Executive Order has not been completed. Its terms remain subject to revision.

I do not think that it is appropriate for me to get into the intricacies of the Executive Branch's drafting process. But let me describe in general terms what the proposed Executive Order will not do. It will not require agencies to use project labor agreements. The agencies retain complete discretion. It will not suggest that project labor agreements be used where they would raise the cost of a construction project. The point of the Order is for agencies to consider whether project labor agreements promote economy and efficiency. The proposed Executive

Order will not change or extend the law regarding project labor agreements. It will not shut out non-union contractors from federal construction projects. Everyone is free to bid. Finally, notwithstanding much public comment to the contrary, the proposed Executive Order will not require workers on federal construction projects to join a union.

Let me briefly discuss project labor agreements in general. A project labor agreement (PLA) is a project-specific agreement, negotiated at the outset of a construction project, between the construction owner or contractor and all of the labor unions representing the crafts that are needed for the project. The agreement covers the wages, working conditions, work rules, and dispute-resolution procedures for the duration of the project. It may also specify a source of skilled labor for the project. Most important, a project labor agreement generally guarantees that the project will be built without strikes, lock-outs, or other disruptions, which might delay completion and increase costs.

Project labor agreements have proven valuable in both the public and the private sectors. They can help ensure that projects are completed on-time and on-budget--without accidents, delays, and unexpected costs. By fixing labor costs, specifying a source of skilled, well-trained workers, and eliminating the risk of work stoppages, project labor agreements support the success of a construction project.

In the private sector, project labor agreements have been used successfully in building such large facilities as the Trans-Alaska pipeline, Disney World, and the Saturn Corporation

automobile assembly plant. State and local governments have funded many construction projects--including bridges, office complexes, transit systems, and airports--that were built under project labor agreements. Perhaps the best-known recent example of a public project involving a project labor agreement is the massive sewage-treatment system for metropolitan Boston, ordered as part of the clean-up of Boston Harbor. I understand that the Boston Harbor project is on-schedule and under-budget.

The federal government has long used project labor agreements on large construction projects, like dams, defense installations, and atomic energy facilities. Today, project labor agreements are in effect--and working well--at several Department of Energy sites, including the Savannah River Site in South Carolina, the Nevada Test Site, the Hanford Site in Washington, the Oak Ridge Site in Tennessee, and the Rocky Flats Plant in Colorado.

In light of positive experience with project labor agreements on public projects, state governors in New Jersey, New York, Nevada, and Washington have issued executive orders authorizing their use for state-funded construction, when such agreements will promote efficient, timely, and safe construction of a project.

In contrast, the federal government has not had a clear, uniform policy addressing when project labor agreements may be used on federal construction projects. President Clinton's proposed Executive Order is intended to establish such a policy. Under the policy, the federal government will be able, in appropriate circumstances where efficiency and economy will be

served, to reap the same benefits that private firms and state and local governments have obtained from using project labor agreements.

The proposed Executive Order is a proper exercise of the executive function. The Federal Property Act--designed to achieve economy and efficiency in contracting--gives the President authority to prescribe policies and directives "as he shall deem necessary to effectuate" the Act. 40 U.S.C. §486(a). The federal courts have made clear that this statute gives the President broad discretion. Because they related to economy and efficiency in procurement, executive orders denying contracts to companies that violated federal wage and price guidelines, or that engaged in discrimination, have been upheld by the courts. The proposed Executive Order on project labor agreements clearly meets this test.

The proposed Executive Order will not mandate the use of project labor agreements. Instead, it would simply encourage federal departments and agencies to consider, on a case-by-case basis: (1) whether using a project labor agreement will promote the economical, efficient, timely and high quality performance of a federal construction project; and (2) whether laws applicable to the construction project preclude the use of a project labor agreement. Agencies would make these determinations according to objective, published criteria. This approach will promote more systematic decision-making by federal agencies and will facilitate oversight of their decisions.

But let me emphasize again: Federal agencies will retain discretion in each case to decide if

a project labor agreement should be used on a particular construction project. The proposed Executive Order will not require that a project labor agreement be used on any individual project, much less on every project. We have taken pains to make this clear in the Order

If a federal agency did choose to require a project labor agreement, no business would be excluded from bidding on the contract for the project. Any contractor could bid on--and win--a federal contract that required a project labor agreement, whether or not the contractor's employees were represented by a labor union. That same principle of open competition would protect subcontractors, as well. Again, we have taken pains to make this abundantly clear in the Order. Project labor agreements will be made available to all contractors and subcontractors wishing to compete for contracts and subcontracts on the project.

Subcontractors whose employees are not represented by a union nevertheless have bid successfully on construction projects covered by project labor agreements. For example, I am told that roughly one-half of the subcontractors on the Boston Harbor project and at the Energy Department's Savannah River site do not have employees who are regularly represented by a labor union.

Just as all bidders would be free to compete for contracts, so all qualified workers would be eligible for employment on projects covered by project labor agreements, whether or not they were members of a labor union. On this issue, too, the proposed Executive Order will be specific. Project labor agreements are to be made accessible to employees without discrimination on the basis of union membership or non-membership.

Certainly, it is true that some project labor agreements call for recruitment of some workers at union-administered hiring halls, a provision that helps ensure a reliable source of skilled, qualified workers. But under the National Labor Relations Act, union hiring halls must be open to all workers, union members and non-members alike. And under the same law, no worker can ever be compelled to join a union, or to pay fees for union activities that are unrelated to collective bargaining. In so-called "right-to-work" states, workers cannot be required to pay any union fees at all. All workers, of course, receive the benefits of any collective bargaining agreement that covers them, and would be governed by the agreement's no-strike and dispute-resolution procedures.

The proposed Executive Order is fully consistent with the National Labor Relations Act. In a 1993 case involving the Boston Harbor project, the Supreme Court itself has upheld a state-required project labor agreement, rejecting the claim that the National Labor Relations Act pre-empted the state's use of such an agreement. Building & Construction Trades Council v. Associated Builders & Contractors of Massachusetts, 507 U.S. 218 (1993). As the Supreme Court observed, "To the extent that a private purchaser may choose a contractor based upon the contractor's willingness to enter into a pre-hire agreement, a public entity as purchaser should be permitted to do the same." That principle supports the use of project labor agreements by federal, as well as by state, agencies. And, indeed, a federal appeals court has upheld the use of a project labor agreement at a Department of Energy facility. Phoenix Engineering, Inc. v. MK-Ferguson of Oak Ridge Co., 966 F.2d 1513 (6th Cir. 1992).

In this important respect, the proposed Executive Order on project labor agreements is easily distinguishable from the President's earlier order addressing the use of striker replacements by federal contractors. And unlike the earlier order, the proposed order will not bar federal agencies from dealing with certain contractors. Instead, agencies are permitted to consider, case-by-case, whether a project labor agreement would promote efficiency and economy. As I have explained, all contractors will remain free to compete for contracts, including contracts that incorporate a project labor agreement requirement.

Apart from attacking the legality of the proposed Executive Order, some critics of the order suggest that project labor agreements will necessarily increase the cost of federal construction. This argument is premised on the notion that unions typically win higher wages and benefits for workers. Even accepting that premise, the fact remains that wage and benefit rates cannot be considered in isolation from the over-all cost of a project. Project labor agreements are intended to keep these costs down. Lower wages and benefits for workers in the short-term do not benefit the Government, if a project ends up costing more because of factors that project labor agreements are designed to address: like work stoppages, labor shortages, unexpected increases in labor costs, accidents, low productivity, or poor quality work. These considerations will have to be weighed by federal agencies on a project-by-project basis, just as the proposed Executive Order contemplates.

I hope that I have been able to clarify what the Administration intends to do--and what it has been careful to avoid--in connection with the proposed Executive Order. The Order will

reaffirm that federal agencies may use a project labor agreement, when it serves the ends of economy and efficiency. State governments, local governments, and private firms all have found that project labor agreements, in the right circumstances, make good sense. The federal government should be able to follow their example. That is all that the proposed Executive Order is intended to permit.

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