

RESULTS OF PROJECT LABOR AGREEMENT SURVEY

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**The research reported herein was carried out at the Industrial Technology
Department during the period of October 1, 1997 thru October 7, 1998**

It is the intent of this document to examine the Boston Harbor Cleanup project's (BHP), Project Labor Agreement (PLA) and its effect on the claims of opponents and proponents on PLAs.

A PLA generally is a collective bargaining agreement negotiated before any construction work begins.¹ These collective bargaining agreements have many different provisions for particular construction projects. In general these provisions are:

- (1) no-strike and no-lockout clause for the duration of the project,
- (2) work rule concessions,
 - (a) standard work day,
 - (I) starting and ending hours,
 - (II) lunch periods,
 - (III) any break periods and how taken,
 - (IV) shift schedules and rates,
 - (V) holiday and rates,
 - (b) standardizing grievance and dispute settling procedures for the project,
 - (c) standard safety instruction including drug and alcohol policy,
 - (d) safety committees and,
 - (e) procedures across diverse and changing contractors,
- (3) other terms may relate to reporting places and travel arrangements on a large project.
- (4) Project agreements may specify location, or process to decide the location of stockpiles, tool sheds, etc...

¹ Coupe, Bradford W. (Winter 1998). Legal Considerations Affecting the Use of Public Sector Project Labor Agreements: A Proponent's View. Journal of Labor Research. 19, 100.

(5) some project agreements have provided for a common introduction to all new employees of any contractor specifying project rules and explaining the significance of the project to the region or nation.²

(6) pay union wages and benefits,

(7) follow union work rules,

(8) And use workers referred through a union hiring hall,

(9) The worker may have to pay a fee to utilize the hiring,

(10) PLAs limit the number of existing employees an employer may use on the project.

(11) The worker will have to pay dues to a union,

(12) If a worker is hired, part of their wages will be contributed to union pension and health plans, not to the plans set up by the nonunion employer.

(13) And, the nonunion worker will likely have to utilize the health care plan available to the union, regardless of whether or not the worker or a family member is undergoing a course of treatment covered under the employer's plan.³

In looking at the proposal for the Boston Harbor Cleanup project, the Massachusetts Water Resource Authority (MWRA) was created to relieve the Metropolitan District Commission's (MDC) of water and sewage services. These services are provided to 2.6 million people in 61 communities (410 square miles). That is almost 480 million gallons of sewage per day.

² U.S. Senate Labor & Human Resources Committee. (April 30, 1997). Hearing on Equal Opportunity in Federal Construction. Statement of John T. Dunlop, p. 8-10.

³ U.S. Senate Labor Committee. (April 30, 1997). Equal Opportunity in Federal Construction. Testimony of Peter G. Vigue, p. 2-3.

On September 5, 1985, the Federal District Court ordered the MWRA to cleanup Boston Harbor because the wastewater that was being discharged was a violation of the 1972 Federal Clean Water Act. A court-ordered schedule was then applied.⁴ The MWRA had to keep up-to-date with the court-ordered schedule or pay large fines.

A brief summary of the scope of the work to be done on the Boston Harbor Cleanup project is stated in the PLA itself;

- (1) primary, secondary and residual wastewater treatment facilities on Deer Island (located in Boston Harbor);
- (2) head works on Nut Island;
- (3) a tunnel under Boston Harbor from Nut Island to Deer Island;
- (4) an outflow tunnel eastward into the Atlantic Ocean from Deer Island, including the installation of diffusers;
- (5) related facilities which include, as necessary,
 - (a) site preparation, demolition and / or rehabilitation of facilities now located on the site;
 - (b) designated materials and personnel loading and unloading and staging sites dedicated to the Project;
 - (c) transportation systems in and around the Harbor for personnel and materials; and
 - (d) installation of utilities necessary for the operation of the Authority's Deer Island facilities, not otherwise undertaken by public or private utility organizations, in the town of Winthrop;
- (6) the interim and permanent sludge treatment plants at FRSA; and
- (7) new construction / rehabilitation work for the Authority's current operating facilities on Deer Island and Nut Island awarded after the effective date of this Agreement.⁵

⁴ The Commonwealth of Massachusetts. (May 4, 1998). State Auditor's Report on the Massachusetts Water Resource Authority's Activities Relative to the Design & Construction of the Inter-Island Tunnel from Nut Island to Deer Island, March 31, 1991 to August 31, 1997. Boston, MA: A. Joseph DeNucci, Auditor of the Commonwealth. No. 97-4053-3, Table of Contents / Executive Summary.

⁵ Massachusetts Water Resource Authority. (Effective May 22, 1989). Boston Harbor Wastewater Treatment Facilities Project Labor Agreement by & between Kaiser Engineer, Inc., on Behalf of the Massachusetts Water Resource Authority & the Building & Construction Trades Council of the Metropolitan District & its Affiliated Local Unions & Local 52, Bricklayers, Local 424, Carpenters, Local 133, Laborers, & the Building & Construction Trades Department, AFL-CIO & its Affiliated International Unions & their Affiliated Local Unions. Boston, MA: Article II, Section 1, p. 4-5.

To begin the project the MWRA looked to hire a construction manager. ICF Kaiser Engineers Massachusetts, Inc., (Kaiser) was awarded that contract. As project manager Kaiser negotiated a PLA with the Building and Trades Council of the Metropolitan District, it's affiliated local unions, and the Building and Construction Trades Department, AFL-CIO. Kaiser engineers acted "on behalf of the Massachusetts Water Resource Authority", the agreement gives the MWRA, ability to so contract.⁶ Essentially, the Boston Harbor PLA is mandated by the government.

The PLA is part of the specifications for the Boston Harbor project. Each contractor must become signatory to the PLA to be able to perform work, set forth by the labor agreement below:

The Authority, and / or Contractor, as appropriate, has the Absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or nonexistence of any Agreements between such bidder and any party to this Agreement provided, however, only that such bidder is willing, ready and able to execute and comply with the Project Labor Agreement, should it be designated the successful bidder.⁷
[emphasis mine]

From the above clause, the PLA gives the MWRA the right to select a qualified bidder, bidders who "execute and comply" with the Labor Agreement.⁸

To prove that the above specification does not limit competition, John Dunlop requested a report of all prime and sub-contractors that submitted bids for work on the

⁶ The Commonwealth of Massachusetts. (Letters Dated January 12, 1990 & February 9, 1990). Letters to James F. Snow, Commissioner, from Peter Waltonen, Deputy General Counsel-Civil Division, & from Marsha Hunter, Senior Counsel, Boston, MA: Department of Labor & Industries.

⁷ *Ibid.* 5. Article II, Section 2(a), p. 5.

⁸ The Commonwealth of Massachusetts. Letter Dated January 12, 1990. Letter to James F. Snow, Commissioner, from Peter Waltonen, Deputy General Counsel-Civil Division. Boston, MA: Department of Labor & Industries.

BHP. These contractors are defined by labor affiliation.⁹ Herbert Northrup and Linda Alario's article also mention the same report. They also have a different view of this directory, however, Northrup & Alario uses the term "reportedly 'open shop'" for these contractors.¹⁰

⁹*Ibid.* 2, p. 14.

¹⁰ Northrup, Herbert R., & Alario, Linda E. (Winter 1998). "Boston Harbor"-Type Project Labor Agreements in Construction: Nature, Rationales, & Legal Challenges. Journal of Labor Research, 19, 8.

A Public Records Request search revealed these two letters of "reportedly open-shop" contractors, working on the BHP.¹¹ In order for statistical analysis of the potential impact of the Boston Harbor project's PLA, validity and credibility of the Kaiser directory was essential.

A randomly surveyed list of "Reportedly Open Shop" contractors were asked the following questions:

1. Is the contractor operating open-shop? Y N
2. Is the contractor a minority or woman-owned enterprise? Y N
3. What type of services did the company provide on the Boston Harbor Cleanup project?
 - a. Skilled trade labor
 - b. Professional
 - c. Supplier
4. What was the status of the construction market at time of the submitted bid?
 - a. Excellent
 - b. Good
 - c. Fair
 - d. Poor
5. Did the project labor agreement have an impact on their decision to bid? Y N
6. Would they sign another project labor agreement? Y N

¹¹ ICF Kaiser Engineers Massachusetts, Inc. (Letters Dated October 9, 1996 & October 15, 1996). [Letters to John T. Dunlop, Ph.D. from Carl R. Tower, Manager, Industrial Relations]. ICF Kaiser list of "Reportedly Open-Shop" contractors.

Survey results are compiled in two categories, Open Shop and Union, and are compared to the list of companies and their labor affiliation as reported by Kaiser.

General survey results

ICF Kaiser Directory

| | | | |
|-----------------------------|-----------|-----------------------------|-----------|
| Open-Shop prime-contractors | <u>0</u> | Open-Shop prime-contractors | <u>1</u> |
| Union prime-contractors | <u>1</u> | Union prime-contractors | <u>0</u> |
| Open-Shop sub-contractors | <u>18</u> | Open-Shop sub-contractors | <u>32</u> |
| Union sub-contractors | <u>14</u> | Union sub-contractors | <u>0</u> |
| Total | <u>33</u> | Total | <u>33</u> |

Prime-contractors

| | | | |
|-----------------------|----------|-----------------------|----------|
| Open-Shop contractors | <u>0</u> | Open-Shop contractors | <u>1</u> |
| Union contractors | <u>1</u> | Union contractors | <u>0</u> |
| Total | <u>1</u> | Total | <u>1</u> |

Sub-contractors

| | | | |
|-----------------------|-----------|-----------------------|-----------|
| Open-Shop contractors | <u>18</u> | Open-Shop contractors | <u>32</u> |
| Union contractors | <u>14</u> | Union contractors | <u>0</u> |
| Total | <u>32</u> | Total | <u>32</u> |

Of the 17 Open-Shop sub-contractors surveyed the following data was developed;¹²

| | |
|---|----------|
| Open-Shop companies that provided skilled trade labor | <u>5</u> |
| Open-Shop companies that provided professional services | <u>2</u> |
| Open-Shop companies that supplied materials | <u>8</u> |
| Open-Shop companies that did not perform work ¹³ | <u>2</u> |

Sub-contractors; questions 2,4-6

20% of the open-shop sub-contractors that provided skilled trade labor that were minority or women-owned businesses.

80% of the open-shop sub-contractors that provided skilled trade labor, submitted bids when the construction market was good.

0% of the open-shop sub-contractors that provided skilled trade labor, the project labor agreement had an impact on their decision to bid.

20% of the open-shop sub-contractors that provided skilled trade labor, would sign another project labor agreement.

¹² One sub contractor was thrown out of this calculation. The services provided on the BHP is not determined here. This company is calculated in the "General survey results" above. This company's labor affiliation is known.

¹³ This was confirmed by an extended conversation with the contact person & the Prime contractor—Sub contractor report.

Statistical and clerical reporting errors were found in the directory. "Reportedly open-shop contractors" that were surveyed, 46% are union contractors. This reduces the number of open-shop contractors to 103 from the original 118. "Reportedly open-shop" sub-contractors that were surveyed, 44% are union contractors. Open-shop sub-contractors that were surveyed, 27% provided skilled trade labor.¹⁴ One "reportedly open-shop" prime contractor was surveyed and operates union.¹⁵

ICF Kaiser Engineers Massachusetts, Inc., Memorandum to Ralph Wallace, from Jeanine Steele, CMS Database Administrator, Memorandum Dated May 12, 1998. The subject of this memorandum is the Prime-contractor—Sub-contractor Report.

¹⁴ *Ibid.* 13.

¹⁵ This one prime contractor's services provided on the BHP is not determined here. This company is calculated in the "General survey results" above. This company's labor affiliation is known.

The ICF Kaiser Engineers Massachusetts, Inc. ("Kaiser") directory states there was

- 102 open-shop sub-contractors
- 155 union sub-contractors
- 16 open-shop prime-contractors
- 39 union prime-contractors

which performed work on the Boston Harbor Cleanup project. Fitchburg State College's survey was of:

- 30% of the sub-contractors classified as open-shop by ICF Kaiser
- 38% of the sub-contractors classified as union by ICF Kaiser
- 18% of the prime-contractors classified as open-shop by ICF Kaiser
- 18% of the prime-contractors classified as union by ICF Kaiser.¹

The survey was conducted via telephone. Each contractor that was contacted answered the following question:

1. "Is your construction company signatory to collective bargaining agreements?"

In addition to the previous question, only actual open-shop contractors that were contacted answered a second question:

1. "What type of service did your company provide in performing work on the Boston Harbor Cleanup project?"
 - a. skilled trade labor
 - b. professional
 - c. supplier

Results from the survey process (For sub-contractors, see Exhibit 1):

1. 102 sub-contractors classified as open-shop (by the ICF Kaiser directory), 45.2% of those surveyed are open-shop, 48.4% of those surveyed are union, and 6.4% of those surveyed did not perform work on the project.²
2. Actual open-shop sub-contractors contacted 35.7% provided skilled trade labor, 42.9% were suppliers, and 21.4% provided professional services.
3. Prime-contractors classified as open-shop (by the ICF Kaiser directory), 33.3% are open-shop and 66.7% are union.³
4. Prime-contractors classified as union (by the ICF Kaiser directory), 100% are union and 0% are open-shop.

ICF Kaiser Directory (Sub-Contractors)

102 open-shop sub-contractors
257 total sub-contractors = 39.6% total open-shop sub-contractors

155 union sub-contractors
257 total sub-contractors = 60.3% total union sub-contractors

F.S.C. Survey (Sub-Contractors)

16 total surveyed,
actual open-shop sub-contractors
which performed work on the project
89 total surveyed sub-contractors,
known labor affiliations, contractors
which performed work on the project = 17.6% total actual open-shop sub-contractors

73 total surveyed,
actual union sub-contractors
which performed work on the project
89 total surveyed sub-contractors,
known labor affiliations, contractors
which performed work on the project = 80.2% total actual union sub-contractors

2 total surveyed,
sub-contractors that did not perform work and
is not tabulated by their labor affiliation
91 total surveyed = 2.2% total actual open-shop sub-contractors that
did not perform work on the project.

¹ Kaiser directory states 39 prime-contractors are classified as union, however, the directory actually contains 38 prime-contractors classified as union. This calculation is based on the 38 prime-contractors classified as union by the Kaiser directory.

² Companies that did not perform work on the project are not tabulated by their labor affiliations.

³ Services provided by actual open-shop prime-contractors is currently not determined.