

**MINUTES
REGULAR COMMISSION MEETING
THE PORT OF PORTLAND
January 11, 2012**

In response to due notice, the regular meeting of the Commissioners of the Port of Portland was held at 9:30 a.m. in the Chinook conference room of the Port's administrative offices located at 7200 NE Airport Way.

QUORUM

Commissioners present were Judi Johansen, President, presiding; Ken Allen; Peter Bragdon; Jim Carter; Steve Corey; Diana Daggett; Bruce Holte and Paul Rosenbaum. Also present were Bill Wyatt, Executive Director; participating staff members; and members of the public.

LEAVE OF ABSENCE

Commissioner Johansen called for a motion to grant a leave of absence to Commissioner Chamberlain due to illness. Commissioner Allen moved to grant the leave of absence. Commissioner Corey seconded the motion, which was put to a voice vote. Commissioners Allen, Bragdon, Carter, Corey, Daggett, Holte, Johansen and Rosenbaum voted in favor of the motion.

MINUTES

Commissioner Johansen called for a motion to approve the minutes of the Regular Commission Meeting of November 9, 2011, and December 14, 2011. Commissioner Holte moved to approve the minutes. Commissioner Allen seconded the motion, which was put to a voice vote. Commissioners Allen, Bragdon, Carter, Corey, Daggett, Holte, Johansen and Rosenbaum voted in favor of the motion.

EXECUTIVE DIRECTOR'S REPORT

Bill Wyatt said for those new to the Commission meeting, the official Executive Directors' report is attached to the board packet that was sent out last week. He said that at PDX, we ended the year with an increase in passenger volumes of 3.8 percent. He said this is not huge, but similarly sized airports around the country lost traffic over the course of the year. Mr. Wyatt said he looked into this and an interesting trend to note is that leisure travel is trending up, which is significant because it has been down for four years. He said this is an indication that people are feeling more confident about their own situation. Mr. Wyatt said while it is nice to have the additional passenger volumes, it is good news from the point of view of the overall economy. Mr. Wyatt noted business travel was relatively flat, although there are many predictions that business travel will increase over the course of the year. Mr. Wyatt noted that we have dual circumstances with increasing passenger volumes and decreasing seats in the market, so fewer planes and more passengers equals full planes.

Mr. Wyatt updated the Commission on the damage done to the South Runway when an F-15 blew a tire while conducting night exercises. He said the South Runway will be closed for a few days so a temporary fix can be applied. Mr. Wyatt said a permanent fix could be quite a bit more substantial, possibly involving the replacement of more than 200 of the 280 panels. He said there is a lot of work yet to be done to determine how to repair the runway so that it regains its projected 40-year life cycle.

Mr. Wyatt said the PDX Citizen Advisory Committee, created to continue the work of the Airport Futures PDX Master Plan process, will have its first meeting on January 19. He said there are 30 members and we are eager to begin working with this new advisory group.

Mr. Wyatt reported positive news on the Columbia River Crossing project; he said the Record of Decision (ROD) has been signed, which validates the technical and public process to date and concludes the environmental planning phase. He said there is a tremendous amount of work to do in the future, but the ROD is a key milestone to get to the next step. Mr. Wyatt said the project planning team and the States of Oregon and Washington are looking at all options available to them in terms of phasing the project and reducing the initial upfront costs.

Mr. Wyatt said beginning in February, Hapag Lloyd, a carrier that has been calling on Portland for a long time, will move from their current 10- or 11-day service to a weekly service and will operate it in concert with another German carrier, Hamburg Sud. He said these are both growing markets from an import and export perspective. Mr. Wyatt said the additional business will help pay the bills and give us more frequent service and greater capacity, both very positive developments. Mr. Wyatt noted that Hamburg Sud has a deep and long tenured relationship with ICTSI, our tenant at Terminal 6.

Commissioner Johansen called for a motion to approve the Executive Director's Report. Commissioner Corey moved to approve the Executive Director's Report. Commissioner Bragdon seconded the motion, which was put to a voice vote. Commissioners Allen, Bragdon, Carter, Corey, Daggett, Holte, Johansen and Rosenbaum voted in favor of the motion.

GENERAL DISCUSSION

2011-12 Federal Legislative Review and 2012 Look Ahead

Rick Finn, Federal Government Relations Manager, provided an overview of the 2011-2012 Federal environment and what it means for the Port of Portland. He said the Port's legislative priorities are moving slowly and at the same time, because of pressures from the annual budget deficit and the long-term debt, the Federal infrastructure funding is very constrained. Mr. Finn said Congress has imposed a ban on earmarks, which means competitive grants, to the extent they exist, are now the primary means for the Port to secure funding for our projects. We will have to focus more attention and energy on our relationships with the different executive branch agencies that have a bearing on our business.

Mr. Finn briefly reviewed the Port's priorities, which include maintenance dredging, rehabilitation of the Columbia River jetties, additional slots at Reagan National Airport, enhanced airport funding tools, free trade agreements, Columbia River Crossing, Federal agencies' Superfund obligations and renewal of the Superfund taxes.

Mr. Finn said he would like to engage with Port Commissioners on many of the Federal priorities, so from time to time he will look to them for their help and participation.

Commissioner Johansen said the Commission would be more than happy to help. She said to the extent Mr. Finn can forecast a few months down the line, it would be helpful to know what is required of them so they are able to make the time available in their schedules.

2012 Oregon State Legislative Agenda

Annette Price, State Government Relations Manager, presented an overview of the 2012 legislative session, the first annual session of the Oregon Legislature. She briefly discussed the key issues to be addressed during the session, which include the State budget, the education system (pre-kindergarten through college) and health care. Ms. Price discussed the political environment for the 2012 session, as well as State Legislative leadership.

Ms. Price said her priorities this session working with stakeholders are to educate Legislators on the Columbia River Crossing project, as well as to monitor the State budget activities in the arena of Business Oregon, Department of Agriculture and Department of Environmental Quality to ensure there are no reductions or additional cuts in areas that affect the Port.

Ms. Price said she will also be looking to engage the Commission, perhaps as early as February, on the legislative issues associated with the Columbia River Crossing.

Regional Industrial Lands Inventory Findings

Keith Leavitt, Real Estate Property General Manager, and Mark Clemons, Group Mackenzie, provided the results of the Regional Industrial Lands Inventory project commissioned by the Port, NAIOP, Business Oregon, Portland Business Alliance and Metro. Mr. Leavitt said the Port led the commissioning of the study to support our strategic objective to be a leader in industrial land acquisition and development in the region.

Mr. Clemons said the purpose of the study was to determine supply and readiness of large lot industrial sites within the Metro UGB and select urban reserves, to inform the work of the local jurisdictions and to lay the foundation for innovative financing tools and approaches to meet the market demand. Mr. Clemons provided a brief overview of Phase 1 of the process and the key findings, which is that the inventory of market ready industrial sites is limited. He said 56 industrial sites were identified with 25+ net developable acres, 9 sites could be shovel ready in 6 months (Tier 1), 16 sites could be shovel ready in 7 months to 2 ½ years (Tier 2), and there are 31 potential sites that would not be shovel ready for 2½+ or more years (Tier 3).

Mr. Leavitt talked about the demand for large sites. He said there is consistent interest in 50+ and 100+ acre sites based on public and private data, even during the current economic downturn. Mr. Leavitt briefly discussed the Port's 40+ years of experience and success in developing industrial land. He discussed the conclusions and next steps, which includes conducting more detailed site assessments of 10 diverse sites for large lot users. These assessments include development scenarios, investment requirements and the economic benefit of development. He said a final report will be ready in February or March.

Commissioner Johansen noted the findings from the ECONorthwest Economic Health Report that Oregon's average wages and salaries are below that of the national average. With that in mind, she asked that as they move on to analyze the economic benefits in Phase 2, they should determine whether developing these sites will "move the needle" on the average income. She said that in her opinion, this is about getting family-wage jobs in Oregon and if it moves the needle, it gives us an agenda to focus on to get something done. Likewise, if it does not, it is also important to know because then we need to be doing something different. Mr. Clemons said they will be looking at the primary and secondary jobs and wages, as well as property tax revenues for each of the Phase 2 sites.

Commissioner Daggett said Oregon has positioned itself competitively in terms of vying for investments at the policy level. She advised that those looking for new policies should endeavor to “do no harm” to those policy elements that currently make us competitive, while seeking to improve areas that could constrain new investment.

Commissioner Corey asked if there was anything that came as a surprise in the study. Mr. Clemons said there were no surprises for him and Mr. Leavitt said he was surprised about the lack of Tier 2 sites available.

Commissioner Bragdon said he would be curious to know how many additional Tier 1 sites we would find if we go out another 25 miles or look elsewhere in the State. He said companies need multiple sites to look at during a site selection process. Commissioner Corey said this would be a good time to continue to look at additional places around the State that have an abundance of 25+ acre sites if we cannot accommodate them here.

Metropolitan Export Initiative

Tom Imeson, Public Affairs Director, provided background on the Metropolitan Export Initiative. He said two years ago President Obama established a national goal of doubling exports in the United States by the end of 2014, and he followed that up with a National Export Initiative that had a number of more specific measures that focused on removing trade barriers and helping firms overcome obstacles to entering new markets. In support of that initiative, the Brookings Institute created the Metropolitan Export Initiative, which is aimed at helping regional, civic, business and public leaders create and implement customized metropolitan export plans. Mr. Imeson said from a Port perspective, the strategies and initiatives being developed link naturally to our strategic goals.

Noah Siegel, International Relations Manager for the City of Portland said the City of Portland, along with the Port, Business Oregon, Metro, Portland Business Alliance and the Columbia River Economic Development Council, have been working on developing an export strategy for our city and region and reached out to the Brookings Institute for their help. He said Portland, along with Los Angeles, Minneapolis-St. Paul and Syracuse, was selected to partner with Brookings in the development on our export plan.

Chris Harder, Business and Industry Manager from the Portland Development Commission, provided an overview of the regional initiative and the key market findings. He said greater Portland is a very successful exporting region in terms of export value, export related jobs and export intensity. He said our good fortunes are due in large part to one sector, computer and electronic product manufacturing; approximately 60 percent of our export value comes from this single industry. Mr. Harder noted that Oregon has a strong reputation in green development, clean technology and progressive transportation and he sees a tremendous opportunity to take advantage of our competitive edge in this area.

Mr. Harder discussed the goals of the Export Strategy, which are to create and retain export-related jobs, diversify export industries and foreign markets, increase the number of firms exporting and maintain leading export position in the United States. Mr. Harder also discussed the export plan strategies, which are to capitalize on our export strength of the computer and electronic manufacturing sector, develop a proactive strategy for a select number of manufacturing firms, improve the access to services to increase the number of SMEs exporting and take Greater Portland's innovations to global markets.

Mr. Siegel said as we move into implementation, we need to gather the policy issues that come up and look at them through an export lens because what obstacles to export growth are regional policy issues. He said we need to have ongoing discussions with federal, state and local leaders about funding of export promotion services and related land use and tax issues. He said there is an opportunity for an ongoing dialogue regarding key export and trade related policy issues, particularly those that lack immediate implementation solutions.

Mr. Siegel said the proposal is to house the plan in our regional public-private entity, Greater Portland Inc. He said this is the natural home for it even though it is a young organization. He said the goal is not to create a new layer of bureaucracy dealing with exports, but to launch an initiative that reorients our economic development work with the participating agencies to focus on, and assist export growth and promotion. Mr. Siegel discussed the next steps, which includes a public rollout on February 15, as well as a fundraising effort that will be led by Greater Portland Inc.

2012 Port of Portland Transportation Improvement Plan

Susie Lahsene said the Port Transportation Improvement Plan (PTIP) is a compilation of transportation projects that are anticipated as necessary to ensure access to Port facilities and properties. She said it represents the mechanics of defining our needs and developing agreement internally on what our priorities are. She said while the Port is the source of funding for some of the improvements, other agencies and the private sector are also identified as potential sources for funding. Ms. Lahsene said in order for us to clearly prioritize our needs and be able to present those to external partners, it becomes critical to our success to secure outside funding.

Ms. Lahsene said our transportation funding needs are coordinated with our regional and state improvement plans and must receive public review and Commission approval as a precursor to any funding allocation. Ms. Lahsene said this year's PTIP includes 92 surface transportation (road, rail, bike, transit and ITS) and marine and aviation capital projects. She briefly discussed the federal, regional and state funding strategy as well as the next steps.

PUBLIC HEARING

Commissioner Johansen opened a public hearing for the purpose of taking testimony on the 2012 Port of Portland Public Transportation Improvement Plan.

Hearing no comments, Commissioner Johansen closed the public hearing and noted that no action was required at this time. The PTIP will be back before the Commission for approval at the February 8, 2012, meeting.

Commissioner Johansen turned the gavel over to Commissioner Corey.

ACTION ITEMS

Agenda Item No. 1

COLLECTIVE BARGAINING AGREEMENT – AVIATION MAINTENANCE CONTRACT

This agenda item requested approval of a new two-year collective bargaining agreement between the Port of Portland and the District Council of Trade Unions, Locals 48 and 483.

Brenda Meece presented the Executive Director's recommendations as follows:

BE IT RESOLVED, That approval is given to enter into a collective bargaining agreement with the District Council of Trade Unions, Locals 48 and 483, for a two-year agreement beginning July 1, 2011, setting forth wages, fringe benefits and working conditions for employees providing maintenance work at the Port of Portland's international and general aviation airports, consistent with the terms presented to the Port of Portland Commission; and

BE IT FURTHER RESOLVED, That the Executive Director or his designee is authorized to execute the necessary documents on behalf of the Port of Portland Commission in a form approved by counsel.

Joe Esmonde of IBEW Local 48 said he was not involved with these negotiations, but he understands they were a little contentious but that at the end of the day, it worked out well. He thanked the Port for all the work it does in construction that helps to keep the building trades alive and well.

Commissioner Corey called for a motion to approve the Executive Director's recommendations. Commissioner Allen moved that the Executive Director's recommendations be approved. Commissioner Holte seconded the motion, which was put to a voice vote. Commissioners Allen, Carter, Corey, Daggett, Holte and Rosenbaum voted in favor of the motion. Commissioners Bragdon and Johansen were not present for the vote.

Agenda Item No. 2

COMMISSION PROJECT LABOR AGREEMENT USE POLICY NO. 6.1.15

This agenda item requested approval of a Port of Portland (Port) policy that sets forth the decision-making framework that Port personnel must follow in deciding whether to use Project Labor Agreements on Port-controlled public improvement contracts.

Tom Peterson presented the Executive Director's recommendations as follows:

BE IT RESOLVED, That the Port of Portland Project Labor Agreement Use Commission Policy No. 6.1.15, dated January 11, 2012, is hereby approved as proposed; and

BE IT FURTHER RESOLVED, That a copy of the Port of Portland Project Labor Agreement Use Commission Policy No. 6.1.15, dated January 11, 2012, be attached to the minutes of this meeting.

Mr. Peterson noted that the Port had received written testimony from three associations representing industry groups regarding Commission Policy No. 6.1.15 (attached to these minutes).

Commissioner Corey called for a motion to approve the Executive Director's recommendations. Commissioner Allen moved that the Executive Director's recommendations be approved. Commissioner Holte seconded the motion, which was put to a voice vote. Commissioners Allen, Carter, Corey, Daggett, Holte and Rosenbaum voted in favor of the motion. Commissioners Bragdon and Johansen were not present for the vote.

The meeting adjourned at 12:01 p.m.

President

Assistant Secretary

Date Signed

An audio recording of these proceedings and the full Commission agenda is available by contacting the Port of Portland administrative offices, 7200 N.E. Airport Way, Portland, Oregon 97218.

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PORT OF PORTLAND COMMISSION POLICY

PROJECT LABOR AGREEMENT USE

POLICY No. 6.1.15

Approved Commission Meeting of January 11, 2012

Definition; Purpose; Application

Project labor agreements (“PLAs”) are generally labor agreements binding on all contractors, subcontractors, and labor unions for all trades on a construction project. For purposes of this policy the term PLA encompasses all pre-hire collective bargaining agreements for Port-controlled public improvement projects, including PLAs, community benefit agreements, community workforce agreements, and similar agreements. This policy sets forth the decision-making framework that Port personnel must follow in deciding whether to use PLAs on Port-controlled public improvement projects. This policy does not apply to public improvement projects where the Port does not contract directly with the prime construction contractor, including tenant-controlled public improvement projects on Port property.

Policy Statement

PLAs Must Advance the Port’s Legitimate Interests. The Port may only pursue a PLA if Port personnel have first reasonably determined, through documented evidence developed under a written PLA use procedure adopted by Port management, that using a PLA on a particular project will advance the Port’s legitimate interests in producing labor-management stability, achieving efficiency, managing construction costs, and ensuring legal compliance. In determining whether the use of a PLA will advance such interests, Port personnel may consider factors such as:

- The size and complexity of the project;
- The importance of the project and the need to adhere to a certain timeline;
- The risk of labor disruption on the project and the circumstances that are present that may lead to a heightened risk of labor disruption, such as the history of labor unrest in the area, the anticipated working conditions of the particular project relating to the environment or work schedules, and the expiration of one or more collective bargaining agreements;
- The impacts of a labor disruption to the Port and its stakeholders, on the operation of the facility, and on the region;
- The costs of a delay should a labor disruption occur; and
- The available labor pool relative to the particular skills required to complete the project.

This list is not exclusive; other factors advancing the legitimate interests described above may be considered in determining whether a PLA is appropriate.

PLAs Must Advance the Interests Embodied in Competitive Bidding Laws. In addition to furthering the Port’s legitimate interests, all Port PLAs must be consistent with the interests embodied in applicable competitive bidding laws. In determining whether the use of a PLA will be consistent with such interests, the following requirements apply:

- Consistent with the Oregon Public Contracting Code, Port PLAs must be used and structured in a manner that allows impartial and open competition, protecting both the

integrity of the public contracting process and the competitive nature of public procurement.

- The use of a PLA must be reasonably intended to promote efficient use of Port resources, maximizing the economic investment in public contracting within Oregon.

Commission Approval. Prior to using a PLA on any Port-controlled public improvement project, Commission approval shall be sought. Commission PLA approval procedures must be established in a PLA Use Procedure to be developed by Port personnel.



Pacific Northwest
Chapter

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January 10, 2012

Tom Peterson
Director of Engineering
Port of Portland
PO Box 3529
Portland, OR 97208

RE: Commission Proect Labor Agreement Use Polict No. 6.1.15

Dear Mr. Peterson:

Thank you for taking the time to meet with us on December 29, 2011 and the opportunity to discuss the Port of Portland's proposal related to project labor agreements on large capital projects in excess of \$25 million. This is an issue that is very important to our members.

Associated Builders and Contractors Pacific Northwest is a chapter of the national Associated Builders and Contractors and supported by a coalition of 25,000 construction professionals nationwide. ABC members are involved in all types of construction and more than a few have worked on Port of Portland projects over the years. For nearly forty years in Oregon, this chapter has long stood for fair competition in the construction industry through advocacy and workforce training.

As I noted in our meeting, ABC has concerns about proposals that seek to intentionally reduce the pool of qualified bidders on public construction projects. That said, we are encouraged by the absence of language in your proposed policy that suggests that only union contractors or contractors whose employees agree to work under union collective bargaining agreements will be considered on projects.

At which time you and staff from the Port begin implementing this policy, considering PLA language, or negotiating the actual PLA we very much wish to be included in conversations and assist you with our experiences and perspectives.

Again though, we hope that the Port of Portland continues to keep language on this issue neutral on the subject of unionization. When you consider that Oregon's Prevailing Wage Law establishes wages and the fact that union membership among construction workers has declined considerably in recent years, such language would be short sighted in our mind.

As I noted previously, the Bureau of Labor Statistics' (BLS) most recent report indicates that the nonunion private sector workforce in the U.S. construction industry comprises 86.9 percent of the

total industry workforce.¹ In Oregon, 86.6 percent of the private construction workforce does not belong to a union. Likewise, few construction industry employees in the surrounding states are unionized: Oregon (15.8 percent) and Idaho (8.1 percent).²

Should the Port or Portland ever be pushed toward using “union only” language down the road you should recognize that you can obviously expect less competition, increased costs and potential delays.

We also caution against letting issues that sometime come up in PLA negotiation from entering the discussion as you move forward. Provisions that the Port Commission, local taxpayers, and local contractors may find particularly objectionable could include:

1. Requiring merit shop companies to obtain most or all of their employees from union hiring halls. This means that if a nonunion contractor is even able to use some of its existing employees, it has to send its workers to the union hiring hall and hope that the union dispatches the same workers back to the PLA jobsite.³ In addition, this provides unions with the opportunity to dispatch “salts” (paid union organizers) with conflicts of interest in employment to nonunion companies. 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 deliver a quality, on-time and on-budget construction product to the Port.
2. Making nonunion employees pay nonrefundable union dues and/or fees and/or join a union to work on a PLA project, even though they have decided to work for a nonunion employer.⁴ PLAs that include union only clauses often require unions to be the exclusive bargaining representative for workers during the life of the project. 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 and not to be represented by a union.

¹ See [www.bls.gov](http://www.bls.gov/news.release/union2.nr0.htm) “Union Members Summary” (Jan, 2011).

² <http://www.bls.gov/news.release/union2.nr0.htm>.

³ 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 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.

⁴ See www.TheTruthAboutPLAs.com, *Project Labor Agreement Basics: What is a PLA?* 4/24/09.

⁵ See www.TheTruthAboutPLAs.com, *Understanding PLAs in Right to Work States*, 07/20/09.

⁶ 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.

3. Mandating through the PLA that contractors follow union work rules, 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 well-trained 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, some PLAs.⁶
4. Require, via the PLA, that nonunion companies to pay their workers' health and welfare benefits to union trust funds, even though these companies have their own benefit plans. Workers cannot access any benefits accrued during the life of the project via union trust accounts unless they decide to leave their nonunion employer, join a union and remain with the union until vested.⁷ Few nonunion employees will join a union after working on a “union only” PLA project, so in order to ensure that nonunion employees have retirement and benefit plans that actually help their employees, companies have to pay benefits twice: once to the union plans and once to the existing company plans. In addition, paying into underfunded and mismanaged union pension plans may expose merit shop contractors to massive pension withdrawal liabilities. Depending on the health of a union-managed multi-employer pension plan, signing such a PLA could bankrupt a contractor or prevent it from qualifying for construction bonds needed to build future projects for the Port of Portland and other customers.⁸
5. Requiring nonunion companies to obtain apprentices exclusively from union apprenticeship programs. Participants in federal and state-approved nonunion apprenticeship programs sometimes cannot work on a job covered by a PLA. This means young people, enrolled in qualified apprenticeship programs, could be excluded from work in their community if these training programs are not run by unions.⁹

As the Port of Portland begins to look at specific language for any future PLA we hope you will resist calls to include these types of provisions to eliminate the potential for controversy.

⁶ See www.TheTruthAboutPLAs.com, [Understanding the Merit Shop Contractor Cost Advantage](#), 05/17/10.

⁷ An October 2009 report by Dr. John R. McGowan, “The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements,” finds that employees of nonunion contractors that are forced to perform under government-mandated PLAs suffer a reduction in their take-home pay that is conservatively estimated at 20 percent. PLAs force employers to pay employee benefits into union-managed funds, but employees will never see the benefits of the employer contributions unless they join a union and become vested in these plans. Employers that offer their own benefits, including health and pension plans, often continue to pay for existing programs as well as into union programs under a PLA. The McGowan report found that nonunion contractors are forced to pay in excess of 25 percent in benefit costs above and beyond existing prevailing wage laws as a result of “double payment” of benefit costs.

See www.TheTruthAboutPLAs.com, [New Report Finds PLA Pension Requirements Steal From Employee Paychecks, Harm Employers and Taxpayers](#), 10/24/09

⁸ See www.TheTruthAboutPLAs.com, [Required Reading on Multi-Employer Pension Plan Crises](#), 03/13/10.

⁹ See www.TheTruthAboutPLAs.com, [Op-Ed: ABC Fights to Preserve Apprenticeship Training Opportunities for Future Construction Work Force](#), 06/01/10

Since this issue came up in our conversation I think that it is important to note that a PLA offers no guarantee against strikes. For example, strikes on PLA projects occurred on five projects in the NYC area¹⁰ and public projects in Indiana this summer.¹¹ Similar strikes occurred on a number of PLA projects in the Chicago area in 2010 and on a private PLA project in Chicago in 2006. In 1999, union carpenters working on the union-only San Francisco Airport expansion struck over wages even though their union had signed a PLA. The union electricians, plumbers and painters also went on strike in support of the union carpenters.¹² The strike cost \$1 million. The project, which was already a month behind schedule, lost even more time.¹³

Our members have completed numerous strike-free projects without PLAs; obviously labor stability is not dependent on PLAs, nor does it necessarily flow from such agreements.

Finally, in today's construction marketplace, many union collective bargaining agreements already contain a promise against strikes, so the alleged need to enter into a PLA to prevent labor unrest may be a moot point. Before deciding on the need for a PLA requirement on any project, it will be important for Port of Portland officials to become familiar with the collective bargaining agreements of trade unions that may work on your projects.

It is also important to note that a lack of "union only" language in a PLA does not discourage or restrict union members from working on these projects; furthermore, Oregon's Little Davis-Bacon Act requires prevailing wage and benefit rates, which are closely linked to union rates, to be paid to all construction workers on Port of Portland projects (or federal Davis Bacon Act requirements where federal funds are involved). Both union and nonunion construction employees are attracted to projects subject to these prevailing wage laws.

Finally, the use of "union only" language in a PLA may impede the ability of potential offerors and subcontractors to meet federal small, minority and disadvantaged business utilization goals and mandates. Comments submitted to the FAR Council rulemaking on FAR Case 2009-005 by federal contractors building projects exceeding the \$25 million threshold indicate that most small-business contractors are not signatory to a union and would be discouraged from participating on Port of Portland projects if they were subjected to any "union only" language.¹⁴

¹⁰ See www.TheTruthAboutPLAs.com, *Another PLA Myth Busted: PLAs Fail to Prevent Strikes on NYC Projects*, 8/2/11

¹¹ *Work resumes at Crown Point sportsplex despite labor strike*, NW Times.com, June 22, 2011.

¹² *Carpenters at Airport Protest Against Union Leadership*, San Francisco Chronicle, May 21, 1999; see also *Arbitrator Orders California Carpenters To End Wildcat Strike, Return to Work*, Daily Labor Report, June 23, 1999.

¹³ *Carpenters at Airport Protest Against Union Leadership*, San Francisco Chronicle, May 21, 1999.

¹⁴ These comments uniformly confirm that federal general contractors have subcontracted much of the work on such projects to small business subcontractors. See, for example, the comments of Jeff Wenaas, President of Hensel Phelps Construction, a prime contractor who has performed more than \$6 billion in construction contracts on federal projects with costs exceeding \$25 million. Hensel Phelps has subcontracted more than \$3.5 billion of that amount to small businesses, the majority of whom are non-union. Wenaas' comments can be viewed at <http://www.regulations.gov/search/Regs/home.html#docketDetail?R=FAR-2009-0024>. These percentages are typical of the testimony of many other ABC members, which can be reviewed at regulations.gov (Docket ID: FAR-2009-0024) and at [ABC Member Survey Supplement to Main Comments](http://www.abc.org/plastudies) at www.abc.org/plastudies.

The National Black Chamber of Commerce wrote this policy statement¹⁵ in opposition to government-mandated PLAs because PLAs harm minority-owned businesses and serve as a barrier to job creation for minority populations:¹⁶

"It is the policy of the National Black Chamber of Commerce, Inc. to oppose Project Labor Agreements. This opposition is based on the fact that African American workers are significantly underrepresented in all crafts of construction union shops. This problem has been persistent during the past decades and there appears to be no type of improvement coming within the next ten years.

There have been rouses of diversity pre-apprenticeship training programs during the past twenty years but no increase in diversity at the apprenticeship to journeymen levels. The higher incidence of union labor in the construction industry, the lower African American employment will be realized. This is constant throughout the nation.

Also, and equally important, the higher use of union shops brings a correlated decrease in the amount of Black owned businesses being involved on a worksite."

The fact that "union only" PLAs harm small businesses and weaken the contracting community's ability to meet federal small and disadvantaged business utilization laws and regulations is one of many reasons why the Small Business & Entrepreneurship Council and the following groups are opposed to government-mandated PLAs: Associated General Contractors, Construction Industry Round Table, Independent Electrical Contractors, National Association of Government Contractors, National Association of Minority Contractors - Philadelphia Chapter, National Association of Women in Construction, National Black Chamber of Commerce, National Federation of Independent Business, National Ready-Mixed Concrete Association, National Utility Contractors Association, U.S. Chamber of Commerce and Women Construction Owners and Executives, USA.

Again, we greatly appreciate being invited to discuss this issue. As the Port of Portland looks to develop policy language and consider how to evaluate the need for a PLA we very much want to be a participant in the discussion. We feel we can offer a lot of information that can help you and other Port of Portland staff make informed decisions that maximize the success of your projects.

Sincerely,



John Killin
President.

¹⁵ [NBCC Policy Statement on Project Labor Agreements](#), 01/26/01

¹⁶ For more comments from the National Black Chamber of Commerce on PLAs see <http://www.thetruthaboutplas.com/2009/07/23/thetruthaboutplascom-to-speak-at-nbcc-legislative-conference>.

January 9, 2012

Mr. Thomas M. Peterson
Chief Engineer
Port of Portland
7200 NE Airport Way
Portland, OR 97218

RE: Port of Portland Project Labor Agreement Policy

Dear Mr. Peterson:

The Associated General Contractors Oregon-Columbia Chapter (AGC) appreciates the opportunity to review the Port of Portland's Project Labor Agreement (PLA) Policy. Although AGC was not invited to participate in the drafting of the policy, we represent a large contingent of the construction industry in Oregon and believe we offer valuable experience and insight regarding PLAs with respect to this proposed policy and the draft implementation procedures.

AGC represents nearly 1,000 companies in the state of Oregon and in Southwest Washington. Our representation includes the full range of commercial construction, including: industrial, building, heavy highway, and multi-family residential, and both union and open shop contractors. As a chapter and as a national organization, AGC has adopted the following position regarding PLAs:

AGC is Committed to Full and Open Competition for All Public Projects. AGC strongly believes that the choice of whether to adopt a collective bargaining agreement should be left to the contractor-employers and their employees, and that such a choice should not be imposed as a condition to competing for, or performing on, a publicly funded project. Government mandates and preferences for PLAs can restrain competition, drive up costs, cause delays, lead to jobsite disputes, and disrupt local collective bargaining. In cases where use of a PLA would benefit a particular project, the construction contractors otherwise qualified to perform the work would be the first to recognize that fact and to adopt a PLA voluntarily. They would also be the most qualified to negotiate the terms of such an agreement.

Government-Mandated PLAs Can Have the Effect of Limiting the Number of Competitors on a Project. This is because government mandates for PLAs typically require contractors to make fundamental, often costly changes in the way they do

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business. For example, a PLA may require a contractor to recognize the local unions as the representatives of their employees on that job; use the union hiring hall to obtain workers; reintroduce inefficient work rules that have been abandoned over the course of collective bargaining; and pay into union benefit and multi-employer pension plans that nonunion employees will never be able to access, forcing non-signatory employers to pay twice for retirement and health care benefits. Such changes are impracticable for many contractors and subcontractors, particularly those not historically signatory to collective bargaining agreements. According to the Bureau of Labor Statistics, union representation in the U.S. construction industry dropped another 5.6 percent in 2010, to a level of only 13.7 percent.

There is No Evidence Proving the Claim that PLAs Will Improve the Economy or Efficiency of a Project. Case studies of the economic benefits of PLAs have had varying conclusions. The Congressional Research Service recently issued a report examining many of the arguments for and against PLAs and reviewing previously published research on their economic effects. The Government Accounting Office also reported that it could not document the alleged benefits of past mandates for PLAs on federal projects and that it doubted such benefits could ever be documented due to the difficulty of finding projects similar enough to compare and the difficulty of conclusively demonstrating that performance differences were due to the PLA versus other factors.

It is our understanding that this policy, if adopted, will likely be unused for the next five years, since there are no foreseen projects that reach the \$25 million threshold. If this is accurate, we believe it is in both the Port's and the public's interests to more fully consider the proposed policy before moving to adopt it. We believe this would lead to a more complete and thorough discussion, and would therefore result in a more supportable policy and implementation procedures.

As the Commission considers this policy, AGC also believes there are a number of issues that need to be addressed.

The draft policy requires that, as part of the review undertaken by the Port Director, that "findings" be established to determine whether a PLA requirement will be recommended to the Port Commission. However, in reviewing the draft language defining "findings," we believe the language actually describes a "determination" or "justification" for a pre-determined decision. Instead, AGC believes that language should be drafted which sets forth the criteria by which a need for a PLA would be required. These criteria would then lead to a set of findings which describe the justification for the PLA in the first place.

At a minimum, Findings of Fact based on these criteria would demonstrate the following:

- How public project costs would be reduced by the imposition of a PLA;
- What data validate the likelihood of a project schedule interruption due to labor disruptions; and
- How worker conditions would be substantially improved with a PLA in place.

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Following the production of the Findings of Fact, if there is a mutual determination between contractors and the project owner to use a PLA, such an agreement could then be negotiated by the contractor and the trade unions involved. A strong model outlining this approach is the PLA negotiated in September 2009 for the Edith Green-Wendell Wyatt Federal Building in downtown Portland (Exhibit A).

Finally, it would be helpful if the Port were to expand on the concept of "legitimate interests" named in the Policy: labor-management stability, achieving efficiency, managing construction costs, and ensuring legal compliance. There should be a report detailing how a PLA would advance these Port interests.

As the Commission considers this draft policy, it is AGC's hope that more time will be dedicated to this topic and that those who have a vested interest and considerable experience, including AGC, be invited into the discussions. I appreciate the opportunity to review the policy and offer AGC's perspective and input.

Please contact me directly if you have any questions or would like to discuss this topic further.

Sincerely,



Mike Salsgiver
Executive Director
AGC Oregon-Columbia Chapter

cc: Allison Koenker
John Rakowitz



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January 10, 2012

Tom Peterson
Chief Engineer
Engineering Services
Port of Portland
7200 N.E. Airport Way
Portland, OR 97218

Dear Mr. Peterson,

First, I would like to thank you for including the merit shop construction community in the project labor agreement policy discussion and for relaying our concerns with the Commission. We have reviewed the proposed policy and draft procedure at length. I am writing on behalf of the Independent Electrical Contractors of Oregon to share our concern regarding project labor agreements broadly. Our interest at this point is to be involved in the drafting of any PLA language to help ensure that merit shop interests are considered. We ask to be on any committee or taskforce that would be working on the PLA standard language.

Our group is committed to removing barriers to construction and barriers to an inclusive workforce. We believe in open and fair competition and oppose any effort to exclude qualified contractors or individuals from a government controlled projects. We further believe that the use of project labor agreements can lead to the reduction of competition and can lead to higher costs for the project. These objectionable outcomes are derived when a government agency uses language in a project labor agreement that forces contractors to choose between becoming signatory and simply not bidding a project.

In the interest of understanding IEC's perspective on the controversial PLA issue and putting our comments in the appropriate context, the Commission should understand that it is difficult to predict precisely how a PLA will impact a construction project without knowing and reviewing the exact content of a PLA. A PLA is a contract, so the various terms and conditions contained in a PLA will significantly increase or decrease its anti-competitive and discriminatory effect. Our comments are to the particularly objectionable clauses that are sometime included in PLAs such as:

1. Merit shop companies must obtain most or all of their employees from union hiring halls. This means that if a nonunion contractor is not able to use some of its existing employees, it has to send its workers to the union hiring hall and hope that the union dispatches the same workers back to the PLA jobsite.
2. Nonunion employees must pay nonrefundable union dues and/or fees and/or join a union to work on a PLA project, even though they have decided to work for a nonunion employer. 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 and not to be represented by a union.

3. PLAs require contractors to follow union work rules, 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.
4. PLAs require nonunion companies to pay their workers' health and welfare benefits to union trust funds, even though these companies have their own benefit plans. Workers cannot access any benefits accrued during the life of the project via union trust accounts unless they decide to leave their nonunion employer, join a union and remain with the union until vested.
5. PLAs often require nonunion companies to obtain apprentices exclusively from union apprenticeship programs. Participants in state-approved nonunion apprenticeship programs cannot work on a job covered by a PLA. Many of the largest apprenticeship programs in the entire state are merit shop programs, which means literally thousands of apprentices would have to quit their program or be excluded from working on a project if a requirement like this were placed in a PLA.

The simple presence of a PLA discourages contractors from bidding. This is easily demonstrated by the single government PLA in the last two decades to be placed in the Portland Metro Area. That federal PLA led to nearly no non-union bids for any element of the project despite their interest, availability and capability to perform the project.

We want to insure that you understand that more than eighty percent of the construction industry is open shop. Eight out of ten contractors, even in commercial construction, are not affiliated with a labor union. But yet, they do believe in training and workforce development just as much as their union counterparts. In fact, our group and others like it sponsor and support some of the largest apprenticeship programs in the state.

We will continue to have tremendous concern with this policy area. A Commission should not be in the position of picking winners and losers in an industry, particularly one already so hard hit by traumatic economic fluctuations. Instead, the commission should ensure that contractors and workers have the ability to compete regardless of any affiliation. Further, workers who have chosen a career as a merit-shop professional should not be forced to pay into, join or otherwise support a labor union in order to gain the right to work on a Port of Portland project. We recommend that the Commission instead protect access to skilled labor by not picking sides through a PLA.

Thank you again for the opportunity to participate in this process. We do appreciate being involved. We understand the need for a policy so that staff can more easily address requests and campaigns for project labor agreements but at the same time we strongly caution against the use of any language that would exclude or lead to the exclusion of workers in this industry. Whether it is a direct exclusion or a forced choice, it is not fair to contractors or individuals to place them in that situation.

Thank you,

