



*Belaboring PLAs:
A Critique of the Seeler
Reports*

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Executive Summary

Project Labor Agreements (PLAs) are agreements between contractors and unions to hire workers employed on a building project through the union hiring hall and to follow union rules in performing the project. New York law requires public builders to determine whether a PLA serves "the public interest in obtaining the best work at the lowest possible price." The Law calls on public builders to avail themselves of "the possibility of cost savings advantages" by mandating a PLA.

This requirement has led public builders to commission studies aimed at showing the cost-saving, if any, that would become possible by performing a project under a PLA. Our task here is to show whether these studies have served their intended purpose.

To perform this task, we focused on five reports by Seeler Engineering, commissioned by public builders in New York state for the purpose of determining whether a PLA would save on costs and further other goals of the Law. We undertook this effort on the basis of many years of experience examining similar reports and performing statistical studies aimed at showing whether PLAs save on construction costs.

We conclude that the methodology used by Seeler does not serve its intended purpose. In particular, Seeler fails to determine whether PLAs save on construction costs. The finding in every Seeler report we inspected was that PLAs do save on construction costs. That finding, however, is, in every instance, unsupported by the facts.

The problem with Seeler's reports is that they do not ask the right question. The question they ask is whether a building project could be performed at a lower cost with a PLA, rather than without a PLA, if the PLA permitted the builder to modify existing work rules and procedures whose modification under a PLA would save on project costs. The problem with this question is that the existing work rules and procedures are always taken to be ones that are in effect under existing collective bargaining agreements. Thus, the studies assume that the only cost-saving source is the modification of rules and procedures already negotiated with the construction unions.

But suppose the building project at issue goes to a nonunion contractor not burdened by the same rules and procedures. Then the cost-saving attributed to the PLA by Seeler is irrelevant to the question of whether to require a PLA or not. What is relevant is whether, in requiring a PLA, the builder discourages bids from nonunion contractors and thus *increases* the cost at which the project is performed. In our own research, we have found numerous instances in which that is exactly the case. We document these here.

Introduction

Seeler Engineering, a New York firm, has written several reports aimed at determining the benefits to its clients of conducting construction projects under a project labor agreement (PLA). The Beacon Hill Institute (BHI) has reviewed five Seeler reports with a view toward assessing the methodology used by their authors. The reports are:

- "Project Labor Agreement Benefits Analysis: City of Rochester, Marina Redevelopment Project, Rochester, New York" (August 2013),

<https://beaconhill.org/BHISTudies/PLA2021/PLA-920/CityofRochester.pdf>;

- "Project Labor Agreement Benefits Analysis: Clinton County Plattsburgh International Airport Renovations, Plattsburgh, New York" (August 2017),
<https://beaconhill.org/BHISTudies/PLA2021/PLA-920/Plattsburgh-Airport-Due-DilligenceStudy-SeelerEngineering.pdf>;
- "Project Labor Agreement Benefit Analysis: City of Ogdensburg, Wastewater System Improvements Project, Ogdensburg, New York" (March 2019),
<https://beaconhill.org/BHISTudies/PLA2021/PLA920/OgdensburgWasteWaterTreatmentPlantDueDilligenceStudy-SeelerEngineering.pdf>;
- "Project Labor Agreement Benefit Analysis, Olympic Regional Development Authority, Olympic Center Modernization, Lake Placid, New York" (January 2020),
<https://beaconhill.org/BHISTudies/PLA2021/PLA-920/Olympic-Center-Final-Draft-Report-2020-01-06.pdf>; and
- "Project Labor Agreement Benefit Analysis: Frank E. Van Lare Water Resource Recovery Facility Capital Improvements Project, Rochester, New York (August 2020),
<https://beaconhill.org/BHISTudies/PLA2021/PLA-920/VanLareDueDiligenceStudy-Seeler2020-08-17.pdf>.

A project labor agreement (PLA) is an agreement between construction unions and contractors employed on a building project under which the contractors adhere to specified work rules and hiring procedures. Typically, PLAs require that all workers be hired through union halls, that nonunion workers join a union and/or

pay dues for the length of the project, and that union rules apply to work conditions and dispute resolution. Construction unions actively lobby governments to require PLAs to the end of securing work for their members and union-signatory contractors on projects funded by taxpayers.

Article 8, Section 222 in New York State's Consolidated Laws establishes the use of PLAs on public building projects when the builder "determines that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages, and any local history of labor unrest, are best met by requiring a project labor agreement."¹

BHI has produced studies, affidavits, and testimony showing that PLAs increase construction costs. To believe the Seeler reports, however, is to expect just the opposite – that PLAs reduce construction costs. The problem with those reports is that they make the absurd assumption that costs depend only on the extent to which a builder could benefit from the modification of existing union rules under a PLA. That assumption ignores the fact that PLAs discourage nonunion contractors, which are not constrained to operate under union rules, from bidding. In this report, we provide a detailed analysis of the Seeler report, "Project Labor Agreement Benefit Analysis, Olympic Regional Development Authority, Olympic Center Modernization, Lake Placid, New York."

The Seeler Methodology

¹ Article 8, Section 222, Project Labor Agreements, The New York State Senate, <https://www.nysenate.gov/legislation/laws/LAB/222>

Public builders are expected to provide reports that speak to whether the use of a PLA on a construction project would be in the builder's interest. Seeler Engineering employs a methodology typical of such reports: It surveys existing collective bargaining agreements, which are taken to provide examples of the work rules and procedures that would apply in the absence of a PLA, and then reaches the conclusion that a PLA would make it possible to identify and put in place less costly alternatives to these rules and procedures.

In its final draft report on the "Olympic Center" project, Seeler analyzed 20 existing collective bargaining agreements (CBAs) for 15 labor craft unions. These CBAs, it said, "would govern construction activities on the project in the absence of a PLA."²

To make this claim is both presumptuous and wrong. In the absence of a PLA, there is every likelihood that the work would go to nonunion contractors, which, by assumption, do not enter into collective bargaining agreements. Thus, the Seeler methodology simply assumes what the PLA's proponents would wish to happen – that the PLA will discourage nonunion contractors from bidding, thus making existing collective bargaining agreements the baseline against which to compare costs under the PLA. Seeler wants us to believe that the existing CBAs impose costs that a PLA would reduce but ignores the fact that those CBAs have no bearing on what costs would turn out to be if the successful bidder wasn't burdened by them in the first place.

² "Project Labor Agreement Benefit Analysis, Olympic Regional Development Authority, Olympic Center Modernization, Lake Placid, New York" (January 2020), <https://beaconhill.org/BHISudies/PLA2021/PLA-920/Olympic-Center-Final-Draft-Report-2020-01-06.pdf>;

In its "Olympic Center" report, Seeler finds that doing the work under a PLA "could result in a savings of \$652,900 or approximately 4.3 percent of the projected cost of the entire project." ³ Because this estimate relies on a false comparison of costs, with and without a PLA, it cannot be believed.

The report says that "the use of a PLA does not prohibit or exclude nonunion or out of state contractors from participating in and bidding on the Project." ⁴ This is correct. However, the very purpose of a PLA, from the viewpoint of the construction unions, is to discourage bids from nonunion contractors. It is the decision *not* to use a PLA that would remove the obstacle to bids from nonunion contractors that could do the work at a lower cost than union contractors. A nonunion contractor can succeed in winning a bid by taking advantage of not only the cost reductions that Seeler considers but also of cost reductions that Seeler doesn't consider.

The "Olympic Center" report makes several assumptions when estimating the cost savings that result from using a PLA. These assumptions, however, lack any basis in evidence. The author is, by and large, making these assumptions based upon his personal judgment on the matter and without any evidence to support him.

Consider one such assumption: "Given the nature and size of this Project, as well as the make-up of the market, we project, in the absence of a PLA, on a dollar basis, the percent of successful unionized contractors and sub-contractors covered by one or more of the applicable CBAs to be approximately 70 percent." The implication is that the saving would be substantially greater if there were 100%

³ Ibid.

⁴ Ibid, 18.

union participation. In other words, the saving is greater as union participation increases. But, of course, the saving could be greater still if bidding without the PLA led to 0% union participation and the performance of the project only by nonunion contractors.

Another key assumption made in the report is that a Wick's Law exemption under a PLA would lead to a cost saving of 10% of the total cost of the project, or \$1.6 million. The author makes this assertion based upon outdated studies from 1987 and 1991 that found the elimination of the requirement to comply with the Law would reduce construction costs by between 20% to 30%. The Wick's Law, in fact, allows for competitive bidding while providing transparency in construction projects funded by taxpayer dollars. Since Wick's Law opens the bidding process to all contractors, it encourages competition, resulting in lower bid costs.

For example, a study conducted in 2007 at the University of Washington contradicts the findings used in the "Olympic Center" report.⁵ The study showed that construction projects using multiple prime contracts saved 5% when compared with projects using a single prime contractor. The study attributed the savings to lower bid costs from multiple prime contractors.

Furthermore, Dr. Paul Carr, who has studied the relationship between bidder participation and construction costs, produced a white paper on bid prices and the level of competition.⁶ The white paper showed that increasing bidders from 3 to 5 on projects leads to, on average, savings of 4.5%.

⁵ Eddie M. Rojas, "Productivity Enhancement: Single vs. Separate Prime Contracting", (2007), *Journal of Construction Engineering and Management*, 134 (10), 758-765.

⁶ Paul G. Carr, "Bid Price and Level of Price White Paper", (unpublished).

The "Olympic Center" report claims a cost-saving from an increase in productivity because of flexible shift start times. According to the report, "increased productivity with the flexibility of start times is estimated to translate into approximately one hour per week per person productivity gained." The report makes no reference to any calculation or research backing this assumption and is therefore purely speculative. On the other hand, there is nothing to stop a nonunion contractor from adopting the same – or even greater – flexibility.

The report further claims that "a PLA could provide additional flexibility in the regular work week by allowing a contractor to use a four 10-hour day schedule or a regular day without requiring permission or consent from the union or formal waiver from the Department of Labor." According to the report, as a result, savings would be one hour per week per person. Again, the report provides no basis for this assumption aside from speculation. Nor does it explain why a PLA would provide for this flexibility when the absence of a PLA could do the same thing.

The report states that a PLA could limit the worker's pay to the prevailing wage. That is deemed to be a benefit of the PLA since a collectively bargained wage might exceed the prevailing wage. But if a PLA could limit the pay to the prevailing wage, so could any successful bidder, including a nonunion bidder. Again, a PLA does nothing to limit costs.

The report attributes a cost-saving of \$51,300 to the use of apprentices by nonunion contractors. While the report assumes nonunion participation to be 30%, a PLA could, in fact, discourage nonunion contractors from bidding on the job. In this

case, no savings would materialize. Conversely, if nonunion participation were 100%, then, by the logic employed here, savings would be even greater.

The report estimates a cost-saving of \$115,000 from the elimination of paid holidays under a PLA. While this certainly could be a stipulation under a PLA, the same could be true without one.

According to the report, "union agreements and, by their nature, PLAs would restrict the work of the governing trade, thereby prohibiting crossover to take place." But this is a reason to expect a project bid without a PLA to come in at lower cost. Nonunion contractors don't have to worry about barriers to "crossovers."

The report estimates a cost-saving of \$26,800 from the reduction of a second shift premium under a PLA. However, the report states that "it is important to note that there is a Town Ordinance in effect that will limit the type of work that can be performed on a second shift to avoid excessive noise between 9:00 pm and 7:00 am." The existence of the Town Ordinance, therefore, nullifies much of the estimated cost savings that would materialize under a reduction of the second shift premium.

The report provides no basis for cost savings that would result from offsite fabrication. The report estimates that offsite work performed by Carpenters, Electrical Workers, Iron Workers, Plumbers and Steamfitters, and Sheet Metal workers would result in a 20% cost reduction. However, the report fails to provide any calculation or evidence for this estimation or to consider the fact that the same offsite savings would be available to nonunion contractors without a PLA.

The report estimates a cost-saving of \$62,900 from an increase in productivity resulting from an increase in work time by five minutes. The report states that "a PLA could eliminate the daily ritual of an organized work break to which Union workers are entitled." While this could apply to union workers, nonunion workers likely already work this additional five minutes per day. Therefore, with 100% nonunion participation, the saving would likely be greater.

Finally, the report estimates the largest labor cost savings to result from reclassifying work to building agreements only. The report goes on to state, "previous PLAs in the region have not altered work classification as stated in the applicable CBAs and therefore would require negotiations with the Trades Council." This stipulation is purely speculative and cannot be considered as a matter-of-fact cost saving. Moreover, the alteration of work classifications could result in a violation of labor law.

Seeler's methodology assumes that the only choice available to a builder is to accept the work rules specified in existing CBAs or to take advantage of the modifications in those work rules that a PLA will make possible. This assumption ignores one of the principal reasons why the builder should not enter into a PLA in the first place, which is that, by not entering a PLA, the builder opens the bidding to contractors that have or can establish their own work rules with their own workforce.

A "modification" provided for by a PLA might well be of no value to the builder if the work rule forged by this modification would apply anyway, were a contractor that does not use union labor to get the work. The fatal flaw in the Seeler report, therefore, is that it compares two worlds, one of which is not germane to the

question they are hired to answer. The first world – the one that is not germane – is one in which there are no PLAs, and the unions do the work but under existing CBAs. The second world is one in which the same unions do the work but, thanks to a PLA, do the work but under more efficient and cost-effective work rules than would apply without a PLA. In effect, Seeler is saying that, since the plan is to give the unions the work anyway, the builder might as well enter the PLA and enjoy such cost savings as the PLA makes possible. However, it is the PLA itself that discourages nonunion contractors from bidding. And it is the absence of a PLA that encourages nonunion contractors to bid and to take advantage of their own cost-saving work rules.

Experience with PLAs

The Beacon Hill Institute (BHI) has conducted six studies aimed at determining the effect of PLAs on school construction costs and final bids.⁷ We examined school construction costs because schools are sufficiently uniform in design and construction to permit comparisons of projects built under a PLA with projects not built under a PLA. Every study found that the presence of a PLA increased final bids. This, we argue, is owed to the fact that nonunion contractors are discouraged

⁷ See “The Effects of Project Labor Agreements on Public School Construction in Connecticut” (February 2020), <https://beaconhill.org/2020/02/11/the-effects-of-project-labor-agreements-on-public-school-construction-in-connecticut/>; “The Effects of Project Labor Agreements on Public School Construction in New Jersey (August 2019), <https://www.beaconhill.org/BHISTudies/PLA2019/BHI-PLA-NJ-Report-20190826FINAL.pdf>; “The Effects of Project Labor Agreements on Public School Construction in Ohio” (May 2017), <https://www.beaconhill.org/BHISTudies/PLA2017/OHIO-PLA-FINAL2017-0524.pdf>; “Project Labor Agreements and Public Construction Costs in New York State,” <https://www.beaconhill.org/BHISTudies/PLA2006/NYPLAReport0605.pdf>; “Project Labor Agreements and the Cost of Public School Construction in Connecticut” (November 2004), <https://www.beaconhill.org/BHISTudies/PLA2004/PLAinCT23Nov2004.pdf> and “Project Labor Agreements and the Cost of School Construction in Massachusetts” (September 2003), <https://www.beaconhill.org/BHISTudies/PLA2003/PLA92503.pdf>.

from bidding on PLA projects. They are discouraged from bidding because they are required to hire workers through the union hiring hall and to provide those workers benefits when they already have a workforce of their own, for which they provide benefits. Seeler concludes that costs would be lower with a PLA than without a PLA only by ignoring the fact, documented in our studies, that PLAs drive up costs by discouraging bids from nonunion contractors.

An example of how the Seeler illogic can end badly for taxpayers is a project originally slated for construction under a PLA, which the builder put up for rebidding once it became clear that the PLA was making the project far more costly than necessary.

In 2009, the U.S. Department of Labor (DOL) mandated that the construction of a planned New Hampshire Job Corps Center take place under a PLA. After a protest from a contractor over the PLA, the DOL hired Hill International, a firm that operates much like Seeler, to do a study of the PLA to determine whether it would save on costs. Following a methodology like Seeler's, Hill found that "a PLA will advance the Federal Government's interest in achieving economy and in the project through standardization of work rules; [and] a guaranteed no-strike, no lock-out, or work disruption provision."⁸

After further delay, the DOL issued another solicitation for bids, again mandating a PLA. This time, however, the U.S. General Accountability Office (GAO) advised the DOL to rebid the project without a PLA. When the DOL complied and

⁸ David G. Tuerck and Paul Bachman, *Project Labor Agreements and Financing Public School Construction in Massachusetts*, December 2006, The Beacon Hill Institute, p. 19, <https://www.beaconhill.org/BHISTudies/PLA2006/BHIMASSPLAUpdate061204FINAL.pdf>.

received the new bids, the cost of the project fell by more than \$6 million.⁹ We know this only because the belated intervention of the GAO forced the builder to ignore the Hill Study and to get bids without a PLA.

Instances like this are rare because it is usually impossible to test the accuracy of reports like those provided by Hill and Seeler. Their reports expect the reader to believe that the authors somehow know what the costs differences are, with and without a PLA. The reader is to believe that the authors can divine the purported cost-saving – and without allowing that the cost-saving could be all the greater if there were no PLA in the first place.

There was an incident, however, in which the city of Ogdensburg, New York, was urged to abandon a PLA endorsed by Seeler because the U.S. Department of Agriculture found that the PLA lacked "sufficient supporting documentation."¹⁰ The city was so committed to having a PLA, however, that it nevertheless took out a loan to replace financing that the USDA withdrew over the issue.

Another incident included a highway construction project to reconstruct Exit 122 on Route 17 in Orange County, New York, which was scheduled to begin in 2011. The project, however, required bidding with the use of a PLA after the fact that several bids were already put forth on the project.¹¹ The New York Department of

⁹ Associated Builders and Contractors, "Taxpayers Save More Than \$6 Million on DOL's New Hampshire Job Corps Center: ABC Contractor Awarded Contract without PLA", (April 24, 2013), <https://www.abc.org/News-Media/News-Releases/entryid/958/-taxpayers-save-more-than-6-million-on-dols-new-hampshire-job-corps-center-abc-contractor-awarded-contract-without-pla>.

¹⁰ Tom Graser, "USDA: Documentation does not support PLA savings", Watertown Daily Times, (August 3, 2019), https://www.nny360.com/communitynews/business/usda-documentation-does-not-support-pla-savings/article_38ddf084-7041-5dbc-bd47-bccaf9f13270.html.

¹¹ Ken Girardin, Empire Center, "Highway project highlights waste", (December 14, 2015), <https://www.empirecenter.org/publications/more-taxdollars-head-for-the-exit/>

Transportation (NYDOT) awarded the work to a union labor firm despite an award that came in \$4.5 million lower than the accepted bid.¹² A judge ruled that the NYDOT had wrongly awarded the contract, leading to over a year in delays and costing taxpayers \$22 million.¹³

Again, the NYDOT required bidding under a PLA for 3.1 miles of sidewalks and trails as part of the Empire State Trail in Syracuse, New York.¹⁴ Originally, the NYDOT requested bids on a project with similar specifications, garnering five bids, which it ultimately rejected.¹⁵ Later, the NYDOT rebid the project under a PLA. In the end, the NYDOT awarded the project to a union firm whose bid was \$1.7 million higher than the lowest bid (which came from a nonunion firm).¹⁶

In 2006, the city of Fall River, Massachusetts, saved \$5.8 million by removing a PLA from a request for bids on three local school building projects. There have been instances, too, when courts blocked attempts to use a PLA on the ground that the PLA was anticompetitive.¹⁷

Other Issues

Cost is not the only issue taken up by PLA advocates. The construction unions claim that PLAs avoid delays and cost overruns and maintain labor "peace." The Seeler reports consider the argument that PLAs help assure labor peace, presumably by deterring disgruntled union workers from disrupting a project if it

¹² Ibid, 9.

¹³ Ibid.

¹⁴ Ken Girardin, Empire Center, "Labor giveaway hits the trail," (January 10, 2020), <https://www.empirecenter.org/publications/labor-giveaway-hits-the-trail/>

¹⁵ Ibid, 12.

¹⁶ Ibid.

¹⁷ Tuerck and Bachman, "Massachusetts", p 9.

goes to nonunion workers. It is, of course, the duty of the builder to decide whether it wants to give in to this kind of intimidation. Our study of federal construction projects under the George W. Bush administration showed that the absence of a PLA did nothing to cause delays or cost overruns.¹⁸

A related argument is that PLAs protect against strikes. But because nonunion workers, not having a union to represent them, find it difficult to go on strike, this argument has little substance. Anyway, strikes were, until recently, mostly a thing of the past. In 1952, there was a record number of strikes in the United States – 470 in all, each involving at least a thousand workers. In 2020, the number was eight.¹⁹

In recent weeks, there has been an uptick in strikes but not, noticeably, in the construction sector. These recent strikes are the result of unions' willingness to take advantage of worker and supply chain shortages related to the covid epidemic and to policies originating in Washington. These matters have no bearing on the question of whether to mandate a PLA or not.

The fervor with which the construction unions advocate for PLAs stems in part from their declining membership. In 1983, 48.1% of private construction workers in New York belonged to unions. By 2020, the fraction had fallen to 24.4%.²⁰ This represents the continuation of a decline that set in after World War II, with the move of housing to the suburbs and the introduction of new technologies that

¹⁸ See David. G Tuerck, Sarah Glassman, and Paul Bachman, *Project Labor Agreements on Federal Constuction Projects: A Costly Solution in Search of a Problem*, (August 2009), Beacon Hill Institute. <https://www.beaconhill.org/BHISTudies/PLA2009/PLAFinal090923.pdf>.

¹⁹ U.S. Bureau of Labor Statistics, “Work stoppages involving 1,000 or more workers, 1947-Present”, <https://www.bls.gov/web/wkstp/annual-listing.htm>. Retrieved October 25, 2021.

²⁰ Barry Hirsch and David Macpherson, “Union Membership, Coverage, and Earnings from the Current Population Survey,” <https://www.unionstats.com/>. Accessed October 7, 2021.

rendered the existing construction skills obsolete. PLAs represent efforts to protect the construction trades in the face of their declining relevance. No piling on of irrelevant statistics is going to change this trend.

Conclusion

PLA studies like those produced by Seeler tell us nothing. Such studies are based on guesswork by their authors as to cost savings that might be realized when a builder enters into a PLA. The problem with this guesswork is that the only determinant of cost is what shows up as the winning bid on a project. If there are cost savings to be realized that make it possible for a contractor to bid successfully, then no PLA is needed. Indeed, the presence of a PLA will discourage bids from nonunion contractors and thus increase costs. Given that the winning bid will vary inversely with the number of bidders, a builder should welcome bids from both union and nonunion contractors.

The cost of a construction project doesn't depend on someone's guesswork about cost savings that could be achieved by modifying current work rules. Rather, it depends on the ability of bidders to save on costs by operating under the most efficient work rules available. Seeler-type studies do not account for cost-saving measures that are available to nonunion contractors and should be taken with a great deal of caution.



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