

---

# 2011 Year in Review

---

Government Affairs

---



## Contents

<b>Introduction: Labor Issues Become Nationally Prominent .....</b>	<b>5</b>
<b>Project Labor Agreements (PLAs): State of California .....</b>	<b>6</b>
First Study on PLAs in California Shows Cost Increase on School Construction .....	6
Governor Signs Union-Backed Senate Bill 922 to End Local PLA Bans .....	6
Governor Signs Assembly Bill 436 to Encourage PLAs .....	7
ABC of California Exposes the Vulnerabilities of Hasty AB 436 Regulations .....	7
ABC Uses Senate Bill 790 to Reveals a Genuine California Union Conspiracy .....	7
Governor Signs Bill Punishing Governments with Fair and Open Competition Policies .....	8
California High Speed Rail Remains Prime Target for PLA.....	8
Projects at the California State Capitol Complex Do Not Require Union Workforce .....	8
Nevada Court Decision Striking Down PLA Could Mean Hope in California.....	8
<b>Project Labor Agreements (PLAs): California Local Governments – North to South.....</b>	<b>9</b>
Petitions Submitted for Fair and Open Competition Ballot Measure in City of Sacramento.....	9
State Politicians Deprive Sacramento County Voters of Fair and Open Competition Policy ....	9
Sacramento Regional Transit District Almost Reverses Decision to Require PLA .....	10
Sacramento Municipal Utility District Does Not Get Labor Peace Despite PLA .....	10
Transbay Joint Powers Authority Surprises No One with PLA Requirement.....	10
South San Francisco Unified School District Has No Qualms about a PLA.....	10
Bay Area Rapid Transit (BART) District Imposes PLA on Another Rail Line .....	10
City of Vallejo Continues Its Unwise Fiscal Habits with Another PLA .....	11
Contra Costa County Looks at Ten Year Old PLA Policy .....	11
Contra Costa Community College District Finally Succumbs to PLA after Twelve Years.....	11
City of Concord Proposes PLAs on Half of Projects in Military Reuse Development .....	11
Alameda County Hospital Built without a PLA .....	12
Oakland Housing Authority Deliberates on PLA, but Fair and Open Competition Continues	12
City of Berkeley Imposes PLA and Promptly Sees Higher Costs and Fewer Bidders.....	12
Berkeley Unified School District Puts School Construction Under a PLA.....	13
City of Dublin Does Not Proceed with a Proposed PLA.....	13
Unions Push for PLA for Development around BART Station in City of Pleasanton.....	13
PLA Threat Subsides at Dublin Unified School District.....	13
Santa Clara Valley Transportation Authority Goes Off the Rails with a PLA.....	13
Design-Build Contractor Negotiates PLA for San José Convention Center .....	13

San José/Evergreen Community College District Extends PLA to New Work .....	14
ABC Makes Northern California Power Agency Accountable for PLA Failings .....	14
Stanislaus County Enacts Fair and Open Competition Ordinance Later Nullified by State ....	15
Lease-Leaseback Contractor Negotiates PLA for Delano Union School District Project.....	15
Santa Barbara County Continues to Deflect PLA Threat .....	15
PLA Threat Emerges for Ventura County Hospital Project .....	15
Los Angeles County Imposes Its First PLA After Long Battle .....	16
Metropolitan Transportation District of Los Angeles County Adopts Massive PLA .....	16
Port of Los Angeles Approves PLA Policy for Next Four Years.....	16
Mayor of Los Angeles Brags about Parade of PLAs .....	17
Los Angeles Community College District Confirms PLAs Lurk Near Corruption.....	17
Contractors Fail to Follow Labor Laws under PLA at Los Angeles Unified School District..	17
Court Rejects Union Lawsuit Challenging PLA Ban at Palmdale Water District.....	17
Pasadena Unified School District Falls to a PLA .....	17
Exposition Metro Line Construction Authority Approves PLA in Tricky Fashion .....	18
PLA Does Not Ensure Labor Peace in City of Long Beach.....	18
Port of Long Beach Loves PLAs and Union Bosses .....	18
City of Baldwin Park Approves First PLA .....	18
City of El Monte Will Require Contractors to Sign PLAs .....	19
Unions Target San Bernardino Community College District for a PLA .....	19
School District in Huntington Beach Seeks Bond Measure with Fair and Open Competition	19
City of Costa Mesa Prepares Proposed Charter with Fair and Open Competition Language ..	19
Apprentices Lose Court Challenge to PLA at Rancho Santiago Community College District	19
Fair and Open Competition Measure Qualifies for Ballot in City of San Diego.....	19
San Diego Unified School District Defends PLA with Court Victory and Phony Study.....	20
San Diego Unified Port District Looks at PLA Proposal for Convention Center Expansion...	20
Election Results Brings PLA Threat to Southwestern Community College District .....	21
Proposed Escondido and El Cajon Charters Likely to Protect Fair and Open Competition.....	21
Rumors Abound about PLA Threats at Other California Local Governments.....	21
<b>Greenmail (Union-Backed Environmental Permit Extortion) .....</b>	<b>21</b>
Bill in Legislature Would Suppress Greenmail and Union CEQA Abuse .....	21
Sutter Health in Elk Grove under Construction without a PLA .....	22
Unions Delay Solar Power Plants to Win PLAs .....	22
CURE Loses Environmental Lawsuit but Still Wins PLA on Solar Project .....	22

Merit Shop Exposes Union Agenda behind Objections to San Bernardino Solar Plant.....	23
ABC of California Decries Greenmail in Los Angeles .....	23
ABC Exposes Greenmail against Proposed Trucking Facility in Visalia.....	23
Unions Block Approval of Hotel in Santa Cruz Using California Coastal Commission .....	24
<b>Prevailing Wage: State of California .....</b>	<b>24</b>
ABC of California Proposes Comprehensive Reforms of Prevailing Wage Laws.....	24
Unions Form Group to Oppose Prevailing Wage Exemptions in Charter Cities .....	25
Developers Discouraged by Court Decision Expanding Prevailing Wage to Private Projects	25
Contractors Must Pay Prevailing Wage Rates on Private Development in Marina .....	25
Unions Convince Court that a Rent Credit Makes a Hotel a Public Works Project.....	26
Governor Brown Signs Bills to Expand Prevailing Wage Coverage .....	26
<b>Prevailing Wage: California Local Governments – North to South .....</b>	<b>27</b>
Unions Fight Numerous Local Efforts to Take Control of Prevailing Wage Policies.....	27
<b>Discriminatory Local Hire Policies at California Local Governments.....</b>	<b>28</b>
Unions Press Fresno Unified School District to Adopt Unneeded Local Hire Policy.....	28
Local Hiring Policy in City of San Francisco Leads to Leftwing Catfight .....	28
City of Santa Rosa Abandons Local Hiring Proposal.....	28
<b>Apprenticeship Issues .....</b>	<b>29</b>
Union Lobbyists Tell Legislative Democrats to Oppose Needs Test Repeal.....	29
State Recognizes Apprenticeship Programs for Photovoltaic Installation .....	29
Bill Setting Dangerous Precedents for Apprenticeship Training Falter Early .....	29
UC Labor Program Issues Green Jobs Report Slanted Toward Unions .....	29
<b>Union Harassment .....</b>	<b>30</b>
LASER is Dead.....	30
<b>Addendum: ABC National Accomplishments in 2011 .....</b>	<b>32</b>
On the Offense .....	32
Successful Defense .....	33

## Introduction: Labor Issues Become Nationally Prominent

Americans heard about labor union issues in 2011, perhaps more so than at any time since the Air Traffic Controllers strike in 1981. Relatively minor changes to collective bargaining conditions for Wisconsin public employees received national attention in the first half of 2011, and unions aligned themselves with class warfare sentiments of the Occupy Wall Street movement when it gained national attention later in the year.

In California, the usual fights over construction labor issues seemed more pervasive and more intense than in the previous 20 years. ABC and its allies continued a proactive campaign to advance and protect the Merit Shop philosophy by seeking fair and open competition policies at local governments, and numerous cities sought to relieve themselves from the costly excesses of state laws that impose government-mandated construction wage rates (prevailing wages).

At the same time, elected officials at local governments in the San Francisco Bay Area and in Los Angeles County voted with impunity for new requirements that contractors sign Project Labor Agreements (PLAs) in order to work on massive public works programs and projects. Meanwhile, unions exploited environmental laws to delay construction of dozens of renewable energy projects while pressuring the developers to sign PLAs. Challenging the union political agenda through the courts proved to be futile for the Merit Shop, as usual. The most demoralizing blow to the Merit Shop happened at the end of the state legislative session, when Democrat leaders and Governor Brown brazenly abused the legislative process to enact a union-backed law nullifying or discouraging fair and open competition policies at local governments.

Based on polls and the election results from a few ballot measures, Californians seem to support fair and open competition when they have a chance to circumvent their elected officials and make their own choices. Most are also disgusted with the abuse of environmental laws by organizations with ulterior motives. But Californians are also consistently willing to vote for candidates who are committed to more government intrusion in economic activities. For a variety of reasons, especially demographic change in the state over the past 20 years, the union-controlled Democratic Party is now entrenched in its dominance of California's state government and most local governments in highly-populated metropolitan areas of California.

This puts the Merit Shop in a precarious position, even as the percentage of California construction workers who belong to a union continues to drop (down to 15.7% in 2010 as compared to 25.4% at the peak of the dot-com boom in 1999). In cooperation with increasingly sophisticated and influential California-based left-wing public policy institutes, unions are using their friendly political environment to demand and win policies and programs that restrict market forces, expand government control, and redistribute wealth. Often it seems that ABC and its Merit Shop allies are alone in fighting for economic freedom, especially at local governments.

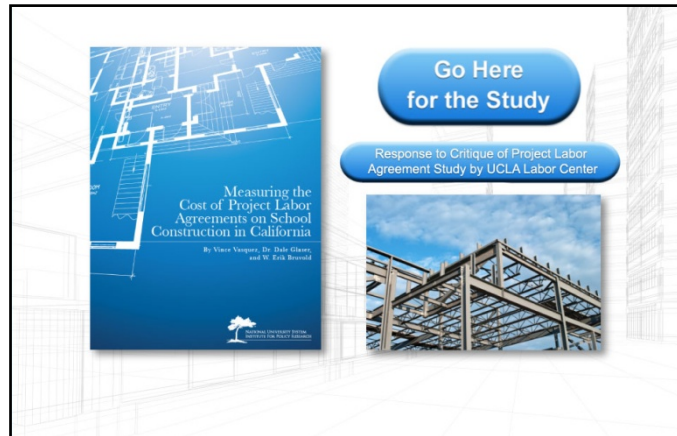
The report below of Government Affairs activities for ABC in California in 2011 is longer than it ever has been. It remains to be seen whether the Merit Shop or the unions have the political momentum in California going into 2012. You are encouraged to read this Year in Review and decide for yourself where our state is going.

## Project Labor Agreements (PLAs): State of California

### First Study on PLAs in California Shows Cost Increase on School Construction

The Associated Builders and Contractors - California Cooperation Committee (ABC-CCC) reported on the July release of a study done by the National University System Institute for Policy Research in San Diego showing that California school construction project costs under PLAs are 13-15 percent higher than costs under fair and open bid competition. The study is at [www.thecostofPLAs.com](http://www.thecostofPLAs.com).

The policy institute held a press conference on July 22 about the study, and a mailer about the study was sent to all public works and facility officials at California local governments. Union officials and a professor at a labor



institute at Michigan State University promptly attacked the study, but undermined themselves by claiming the study omitted the consideration of variables that the study actually and clearly considered. This comprehensive study took 2½ years to complete and is probably the best PLA study produced to date in terms of sample size and validity of the results.

### Governor Signs Union-Backed Senate Bill 922 to End Local PLA Bans

In the most dramatic effort to date to crush California's Fair and Open Competition movement sparked by the 2009 California Strategic Planning Conference on Fighting PLAs, Governor Jerry Brown announced on October 2 that he signed Senate Bill 922. He even included a signing message that declared SB 922 to be "fair" and "democratic." Created through a gut-and-amend action on September 2, Senate Bill 922 establishes a definition of a PLA in the California Public Contract Code that is likely to be referenced in future legislation. It nullifies local government "Fair and Open Competition" measures in counties and general law cities that established a policy principle that the government shall not require its contractors to sign a PLA with unions. It also attempts to interfere with charter cities' local home rule authority for municipal affairs by trying to cut off state funding for projects in charter cities with such a policy. There are numerous legal interpretations of SB 922 and proposals for lawsuits to overturn SB 922.

Senate Bill 922 foiled efforts to enact fair and open competition ordinances at several local governments in both Northern and Southern California, as part of the "21 in 2011" campaign to ban PLAs at 21 California local governments in 2011. Some local governments had planned to place the ordinances on their meeting agendas for consideration before the end of the year.

ABC of California played a lead role in an organized campaign of lobbying, news media outreach, grassroots action, and coalition-building to stop SB 922 in the state legislature or with a veto. Union lobbyists were surprised by the speed and aggression of our opposition, but they

had the backing of top Democrat leaders in the Assembly and Senate, as well as the Governor. Every Republican voted against SB 922 and every Democrat voted for it.

### **Governor Signs Assembly Bill 436 to Encourage PLAs**

On September 30, Governor Jerry Brown also signed Assembly Bill 436, a bill created through a gut-and-amend process on August 30 that exempts certain local governments from paying labor compliance fees to the state if they require contractors to sign PLAs with unions for construction.

### **ABC of California Exposes the Vulnerabilities of Hasty AB 436 Regulations**

The California Department of Industrial Relations (DIR) issued draft proposed regulations on September 29 reflecting AB 436 and set a hasty October 14 deadline to submit comments. In its comments, ABC of California asked for a deadline extension so that the DIR and the public could adequately consider new regulations based on a bill that had not even been signed into law when the DIR proposed regulations to implement it. DIR rejected ABC's request "because of the unique timing concerns of this rulemaking" and specifically because acceding to the request of ABC of California would "ultimately prevent the state from selling its bonds." In response to a large section of ABC of California's comments on the regulatory language, the DIR wrote that "These five recommendations merit further consideration and study. However, for reasons previously noted in responses to the General Comments above, the Director is not in a position to delay or protract this rulemaking in order to draft and seek comment on additional regulations." Based on the state's arguments, there would be potential for ABC of California to disrupt the state's efforts to sell bonds for school construction, water project construction, and park construction if it was able to get a judge to issue a preliminary injunction to stop the implementation of these regulations because they were improperly promulgated. This disruption would also pressure the legislature to change the law enacted by AB 436 to get rid of the "fees unless a PLA" language.

### **ABC Uses Senate Bill 790 to Reveals a Genuine California Union Conspiracy**

In September, supporters of Senate Bill 790 launched a public relations campaign to downplay an obscure but controversial unrelated provision attached to the end of the bill that allows public utilities to assess ratepayers with the costs of payments to Labor-Management Cooperation Committees as mandated in PLAs for utility infrastructure construction. On September 22, the Coalition for Fair Employment in Construction – in cooperation with ABC of California – released the most comprehensive analysis yet of "a genuine union conspiracy" involving Senate Bill 790, PLAs, and Labor Management Cooperation Committees. Peppared with links to documentary evidence, the "Investigative Report" examined step-by-step how unions exploit the California Environmental Quality Act (CEQA) to browbeat power plant developers into signing a PLA, which requires the developer or its contractors to make payments to trust funds authorized by the federal Labor Management Cooperation Act of 1978, which in turn these union-affiliated trust funds use to finance political activity for unions.

## **Governor Signs Bill Punishing Governments with Fair and Open Competition Policies**

On October 3, Governor Brown signed Senate Bill 310, which was amended by Senator Loni Hancock (D-Berkeley) on June 20 to authorize a city or county to establish a Transit Priority Project Program for infrastructure development – unless the city or county exempts itself from state prevailing wage laws or prohibits PLAs.

## **California High Speed Rail Remains Prime Target for PLA**

Representatives of the California State Building and Construction Trades Council and local Building Trades Councils continue to be leading advocates for the state's proposed \$98.5 billion High-Speed Rail. On March 31, the State Senate Rules Committee appointed the head of the State Building Trades to a vacant seat on the California High-Speed Rail Authority Board of Directors. ABC of California has long tracked reports and rumors that the unions will seek a PLA either through the California High-Speed Rail Authority's Board of Directors or through pressure on the prime contractor.

## **Projects at the California State Capitol Complex Do Not Require Union Workforce**

ABC of California and the Coalition for Fair Employment in Construction confirmed on July 26 that the California Department of General Services is continuing to bid projects at the state capitol complex without requirements for an "all union workforce." ABC members are now working on state capitol projects such as a \$50 million Library and Courts Building Renovation.

The Senate Rules Committee had required the Department of General Services to insert an "all union workforce" requirement in its bid specifications for the Capitol Safety and Security Improvements Project in 2005. The Zumbrun Law Firm then sued the California State Legislature and the Senate Rules Committee to strike down the discriminatory requirement and force the release of records revealing who directed the provision to be added to bid documents. A Sacramento County Superior Court and a California Court of Appeals ruled that the legislature was exempt from state competitive bidding laws and did not have to release records about the directive under the Legislative Open Records Act. Then, Republican legislators introduced bills sponsored by ABC of California in consecutive years to end the legislature's exemption from state competitive bidding laws. The bills failed to pass in committee but created a stir.

## **Nevada Court Decision Striking Down PLA Could Mean Hope in California**

On August 15, ABC had a rare court victory that suggests a new approach for legal challenges against PLAs nationally and in California. A judge in a Nevada District Court in Las Vegas found that a routine PLA approved by the Clark County Board of Commissioners for a county prison project gave an unfair advantage to union workers and signatory contractors, and therefore the PLA failed to meet the Nevada Supreme Court's test for the state to guard against favoritism and corruption. ABC of California's Government Affairs Director testified as an expert witness in the court hearing, but his testimony was stricken from the record after the union attorney (also from California) successfully argued to the judge that he wasn't an expert on PLAs. As a result

of the court decision, the county commissioners rejected all bids for the project in September and subsequently awarded contracts for two “phases” without PLAs requirements. The Nevada Supreme Court is considering an appeal from the county to review the lower court decision.

## **Project Labor Agreements (PLAs): California Local Governments – North to South**

### **Petitions Submitted for Fair and Open Competition Ballot Measure in City of Sacramento**



On June 9, a group of local contractors, construction workers, business associations, and taxpayer advocates held a press conference announcing the launch of a bold campaign to win voter approval of two simultaneous ballot measures that would ensure fair and open competition for taxpayer-funded construction contracts in the City of Sacramento and in the County of Sacramento. More than 100 people attended the press conference to support ballot initiatives.

A team of ABC attorneys and staff developed the language of the policy from scratch, and it may be the best-worded policy developed to date in the country. Despite occasional incidents of union operatives trying to intimidate signature gatherers and discourage people from signing the petitions, more than 49,000 Sacramento voters signed the petitions. On December 27, the Fair and Open Competition - Sacramento campaign delivered the petitions for the city ballot measure to the Sacramento City Clerk. If enough valid signatures are submitted to qualify the initiative, it will appear on the June ballot or November ballot, depending on when the Sacramento City Council chooses to place it.

Also in the City of Sacramento, Mayor Kevin Johnson and other community leaders are trying to keep the Sacramento Kings professional basketball team with a proposed new \$387 million arena. Unions want a PLA and are prominent in the coalition backing the new arena.

### **State Politicians Deprive Sacramento County Voters of Fair and Open Competition Policy**

The Fair and Open Competition - Sacramento campaign was easily collecting signatures on petitions for a ballot measure to ensure fair and open competition in the County of Sacramento. After Governor Jerry Brown signed Senate Bill 922 and nullified all county fair and open competition charter provisions and ordinances, the campaign made the difficult but necessary decision to terminate the county fair and open competition campaign.

### **Sacramento Regional Transit District Almost Reverses Decision to Require PLA**

On September 12, at the instigation of ABC and its Merit Shop allies, the Sacramento Regional Transit (RT) District board debated but narrowly rejected the repeal or amendment of a 2009 resolution requiring construction contractors to sign a PLA to build a \$270 million planned extension of the South Sacramento Corridor light rail line.

To vote on RT business, the board uses an unusual weighted voting system established by a state law enacted in 2006. The power of each board vote is based on a formula that includes the percentage of funding that the local government contributes to RT. All votes total to 100, even with absences, as long as there is a quorum. The original vote on December 14, 2009 was 54 to 46, while the vote on September 12, 2011 was 52 to 48. Close, but still a loss.

### **Sacramento Municipal Utility District Does Not Get Labor Peace Despite PLA**

On March 31, the Sacramento Municipal Utility District (SMUD) released a press release asserting that it was building the Phase 3 Solano Wind Farm Project with local workers, contrary to the charges of protesters representing construction unions in Solano County. Contractors were required to sign a PLA in order to work on the project. The Coalition for Fair Employment in Construction reminded SMUD board members at their April 7 meeting about the false promises of this PLA, which include local hiring and labor peace. ABC then obtained internal public records from SMUD that detailed the entire controversy.

Also at SMUD, the board stated on November 15 that the general manager will no longer negotiate and implement PLAs on projects without authorization from the board of directors. The Western Electrical Contractors Association (WECA) took the lead (in alliance with ABC and other groups) to ask SMUD for board accountability on PLAs. This was in response to staff approval in 2010 of PLAs for two large projects without board discussion or authorization.

### **Transbay Joint Powers Authority Surprises No One with PLA Requirement**

On November 10, the Board of Directors of the Transbay Joint Powers Authority (in San Francisco) voted for a PLA for the Transbay Transit Center Project, a \$4 billion multi-modal transit center in downtown San Francisco.

### **South San Francisco Unified School District Has No Qualms about a PLA**

The school board voted 5-0 on March 10 for a PLA on March 10 for construction funded by Measure J, a \$162 million bond approved by 78% of voters in November 2010.

### **Bay Area Rapid Transit (BART) District Imposes PLA on Another Rail Line**

On October 27, the BART board voted 9-0 to authorize the BART General Manager to execute a “Project Stabilization Agreement” with the Contra Costa Building and Construction Trades

Council for the \$462 million eBART Project in East Contra Costa County. BART is reportedly working with the unions for a PLA to cover all future construction projects on the system. BART's Oakland Airport Connector project is currently under construction with a PLA.

### **City of Vallejo Continues Its Unwise Fiscal Habits with Another PLA**

On November 15, the Vallejo City Council voted by consent to require contractors to sign a PLA for construction of the \$20 million Vallejo Ferry Maintenance Facility Improvement Project.

### **Contra Costa County Looks at Ten Year Old PLA Policy**

On October 4, the Contra Costa County Board of Supervisors voted to direct its Internal Operations Committee to review the County's experience in implementing and administering the Board's policy requiring PLAs on construction projects costing in excess of \$1 million. In January 2002, the Board of Supervisors had adopted a policy requiring contractors to sign PLAs to work on all County construction projects of more than \$1 million. In November 2008, the Board of Supervisors had claimed that the routine use of PLAs did not have any identifiable negative influence on the overall cost or schedule of County capital projects, and therefore suspended further review of the policy until the board requested further examination or amendment of the existing policy.

### **Contra Costa Community College District Finally Succumbs to PLA after Twelve Years**

The Contra Costa Community College District Governing Board voted 3-1 on December 14 for a PLA on all future work of \$2 million or more, including work funded by Measure A, a \$287 million bond approved by 57% of voters in June 2006. ABC and its allies had managed to hold off PLA threats at this college district for the last five years and for the past 11 years in total, but the appointment of a plumbers' union official to a vacancy on the governing board in March 2011 seemed to be the final blow. ABC coordinated with local activists to reveal the union official's pending conflict-of-interest, his failure to file a statement of interests as required by law, and his failure to report his union income when he did file his statement (200 days late).

### **City of Concord Proposes PLAs on Half of Projects in Military Reuse Development**

A September 12 staff report to the Concord City Council's Policy Development and Internal Operations Committee evaluated specific construction policies demanded by labor unions over the past three years to impose on developers associated with the Concord Naval Weapons Station Reuse Project. Proposals included a PLA, local hiring and procurement preferences, prevailing wages, living wages, apprentice programs for the local work force – in particular for veterans – and incentives to encourage green business and green building training. Regarding PLAs, the staff report noted that “it was very difficult for staff to find definitive proof of the effectiveness and success of these agreements” and recommended “a balanced and phased approach” to PLAs that would evenly divide contracts greater than \$1 million “between PLAs (union labor) and open shop contracts (non-union).”

## **Alameda County Hospital Built without a PLA**

Although it appeared that the Alameda County Board of Supervisors was poised in 2010 to require contractors to sign a PLA for the Highland Hospital Acute Tower Replacement Project, a PLA was never approved. As of December 17, the web site for this project – maintained by the design-build contractor, Clark Construction – indicates that contractors do not need to sign a PLA. All of the “core subcontractors” are unionized.

## **Oakland Housing Authority Deliberates on PLA, but Fair and Open Competition Continues**

In September 2010, the Oakland Housing Authority selected Davillier-Sloan, Inc. to prepare a study of the potential benefits and consequences of signing a PLA for future housing authority work. On January 24, the firm presented its report and a recommendation to negotiate a PLA to the Oakland Housing Authority Commissioners, behind closed doors. A coalition organized by ABC of “Concerned Taxpayers, Construction Association Representatives and Small, Local, Women and Minority Business Owners in Oakland” issued a press release criticizing the study and identified conflicts-of-interest involving Davillier-Sloan.

At the Oakland Housing Authority’s special March 21 meeting, union representatives and a Commissioner for the Port of Oakland (Victor Uno) attacked ABC and called for a “Community Workforce Agreement” (PLA) to encourage apprenticeships. Contractors and union representatives continued to attend meetings and hammer each other, in particular at the May 23 meeting. On May 31, in response to a question from ABC’s Nicole Goehring, the HUD Secretary said he was encouraging Oakland Housing Authority to use a PLA. As of December 17, the Oakland Housing Authority has not approved a PLA.

## **City of Berkeley Imposes PLA and Promptly Sees Higher Costs and Fewer Bidders**

At its January 18 meeting, the Berkeley City Council ignored objections from ABC and approved a PLA (described in official city documents as a Community Workforce Agreement) for all projects over \$1 million for a three year period. According to the staff report, “By mutual consent of the parties, the million dollar threshold may be reduced to an amount not below \$250,000 after one year from the effective date of the Agreement after an analysis and City Council review of the number of local jobs created as a consequence of the agreement, the costs of implementing the agreement, and the impacts on small, Berkeley based businesses bidding on City projects. To cover the expenses related to the implementation and management of the local hiring program each contractor and/or subcontractor shall contribute ten cents (\$0.10) per hour worked or paid to each construction person performing work on the projects. These local hire funds shall be deposited in a City account to be used by the City in its sole discretion for implementation and management of the Agreement.”

When the City of Berkeley bid the Berkeley Public Library North Branch Improvement Project – its first project under the PLA – the low bid was \$560,000 (11.8%) over the engineer’s estimate. The first and third lowest bidders withdrew their bids because of the PLA. Higher bids exceeded

the amount of funds available for the project. A second round of bidding resulted in a responsive low bid that was 14.7% over the engineer's estimate.

### **Berkeley Unified School District Puts School Construction Under a PLA**

On October 12, the Board of Trustees voted 4-0 (with one board member recusing himself) for a PLA on future projects funded by Measure I, a \$210 million bond approved by 77% of Berkeley voters in November 2010.

### **City of Dublin Does Not Proceed with a Proposed PLA**

Since 2010, unions have encouraged Dublin City Council members and staff to require city contractors to sign a PLA on city projects as part of a package of policies that would allegedly promote local hiring. There was a lot of activity behind the scenes, but the city council did not review or consider a PLA in 2011.

### **Unions Push for PLA for Development around BART Station in City of Pleasanton**

Early in 2010, the Pleasanton City Council appointed a 21-member Hacienda Transit-Oriented Development Task Force with the mission of drafting guidelines and development regulations to evaluate mixed use or residential projects on sites near and including the Pleasanton/Dublin BART station. Unions began using the task force to promote a PLA and lobbied the city council in 2011 for a PLA requirement on these projects.

### **PLA Threat Subsides at Dublin Unified School District**

In 2010, a local news media web site revealed that unions were pressuring the school district to adopt a PLA for remaining construction funded by Measure C, a \$184 million bond approved by 73% of voters in November 2004. ABC worked behind the scenes against the proposal. In February, ABC learned that unions had withdrawn their proposal.

### **Santa Clara Valley Transportation Authority Goes Off the Rails with a PLA**

On September 1, the Board of Directors of the Santa Clara Valley Transportation Authority voted 9-1 for a PLA on the \$772 million Line, Track, Stations and Systems Design-Build contract of the Silicon Valley Berryessa Extension Project. Board member and Los Altos Hills Town Councilmember Rich Larsen made a motion to renegotiate the PLA with direction to staff to include fair provisions; after his motion failed to get a second under irregular parliamentary procedures, Larsen was the lone vote against the PLA.

### **Design-Build Contractor Negotiates PLA for San José Convention Center**

Unions long targeted the \$120 million San José McEnery Convention Center Expansion and Renovation for a PLA, but the San José City Council never voted to require contractors to sign one. The city's May 2010 bid documents for a design-build contract indicated that the city did not require a PLA, but a PLA could be part of the design-build entity's "local contracting plan."

The San José City Council approved Hunt Construction for the project in September 2010. By November 2011, Hunt Construction was issuing bid specifications that included a draft PLA. In response to an inquiry from ABC about how a PLA could be imposed without approval from the city council, city staff informed ABC on December 1 that the city's Request for Proposals for a design-build entity on the convention center required the submission of a "labor peace plan," and Hunt Construction's winning bid indicated a PLA would be used to ensure labor peace.

### **San José/Evergreen Community College District Extends PLA to New Work**

On September 13, the governing board of the San José/Evergreen Community College District voted 7-0 to authorize amendments to the district's PLA (officially referred to as a Construction Careers Agreement or Project Stabilization Agreement) to apply to construction funded under Measure G, a \$268 million bond approved by 59% of voters in November 2010. The PLA also extends the duration of the original PLA through the remainder of construction funded under Measure G, a \$185 million bond approved by 65% of voters in November 2004. ABC was derided during board consideration of this PLA amendment.

The Santa Clara & San Benito Counties Building & Construction Trades Council has thoroughly infiltrated this college district. For example, the Workforce Institute at San José/Evergreen Community College District is working with various unions and union-related organizations such as Working Partnerships USA to train workers through such programs as the "Apprentice Roofers Readiness Program." Neil Struthers, head of the Santa Clara & San Benito Counties Building & Construction Trades Council, is a member of the Board of Directors for the San José/Evergreen Community College District Foundation.

### **ABC Makes Northern California Power Agency Accountable for PLA Failings**

Through a public records request, ABC of California discovered that unions are not fulfilling their promises in the PLA approved by the Northern California Power Agency (NCPA) commissioners in November 2009 for the Lodi Energy Center. For example, the Helmets to Hardhats union program to find jobs for veterans completely failed: that program had not provided one veteran with a job on the project, according to NCPA records obtained on September 9. ABC of California also continued to publicize a \$90,000 check mailed by NCPA in August 2010 to a mysterious union slush fund (the California Construction Industry Labor-Management Cooperative Trust) that subsequently sent letters to local elected officials throughout the state lobbying for more PLAs.



## **Stanislaus County Enacts Fair and Open Competition Ordinance Later Nullified by State**

On July 12, the Stanislaus County Board of Supervisors voted 5-0 to enact a fair and open competition ordinance on county construction projects. The ordinance was nullified when Governor Jerry Brown signed Senate Bill 922 in October.

## **Lease-Leaseback Contractor Negotiates PLA for Delano Union School District Project**

Kern County experienced its first PLA on a government project – although not via a government mandate – after the Delano Union School District (in Kern County) awarded a lease-leaseback contract to a company called Grapevine Advisors, LLC to build the \$40 million dollar Westside Educational Complex Project, an elementary school. Grapevine Advisors signed a private union-only PLA with unions for the project, even though it is not a licensed contractor and therefore does not have the right to sign PLAs under the National Labor Relations Act. Information about Grapevine Advisors, LLC is elusive, except it has also proposed to the Delano City Council that it develop a project called Block H, which would include a court building.

## **Santa Barbara County Continues to Deflect PLA Threat**

Members of the Santa Barbara County Board of Supervisors seeking a PLA policy for all county work continued their relentless 2010 PLA campaign into 2011 by proposing on February 16 a pilot project (through 2015) for a “Local Construction Workforce Agreement.” It turned out to be just another PLA, and local opposition again derailed the proposal.

## **PLA Threat Emerges for Ventura County Hospital Project**

After two months of behind-the-scenes maneuvering among Ventura County union officials, elected county supervisors, county staff, and contractors, the Ventura County Star revealed on November 28 that unions were seeking a PLA on the \$250 Ventura County Medical Center. Two county supervisors seeking a PLA had concealed their plan behind a formal inquiry to county staff on August 2 about ways to guarantee local hiring. The Coalition for Fair Employment in Construction followed up on December 3 with an opinion piece in the Ventura County Star newspaper against the PLA.



### **Los Angeles County Imposes Its First PLA After Long Battle**

On May 24, a seven-month battle at the Los Angeles County Board of Supervisors over a proposed PLA ended with a 3-2 vote to require contractors to sign a PLA (renamed on the May 24 agenda as a “Community Workforce Agreement”) on the \$95 million Multi-Service Ambulatory Care Center Project, a part of the larger Martin Luther King, Jr. Medical Center Replacement Project. This is the first PLA mandated by Los

Angeles County, the nation’s most populous county. A coalition of minority business owners attempted to hold a press conference on March 2 at the county headquarters to announce their opposition to the PLA, but instead found themselves surrounded and harassed by dozens of sign-waving union activists.

### **Metropolitan Transportation District of Los Angeles County Adopts Massive PLA**

On September 22, Los Angeles Mayor Antonio Villaraigosa, Los Angeles County Supervisor Mark Ridley-Thomas, and Los Angeles City Council member Richard Katz led the charge for the Board of Directors of the Metropolitan Transportation District to vote 11-1 (with one absence) to negotiate a PLA (and associated “Construction Careers Policy”) for projects in the district’s 30-year Long Range Transportation Plan, including projects funded by the Measure R sales tax approved by 67% of Los Angeles County voters in November 2008. Unions claim this PLA will cover \$70 billion in projects and 260,000 in construction jobs.

### **Port of Los Angeles Approves PLA Policy for Next Four Years**

The Los Angeles Board of Harbor Commissioners voted for a PLA on March 17 that covers about \$1.5 billion in capital improvement projects from 2011 through 2015. The Los Angeles City Council then approved the PLA on a 13-0 vote (with two absences) on May 11. The PLA was signed at a ceremony on June 28. The Port had approved PLAs on an individual project basis since 2002.

Also concerning the Port of Los Angeles, the Burlington Northern Santa Fe (BNSF) Railway Company announced on October 25 that it had agreed to sign a PLA on \$255 million in construction for the proposed \$500 million Southern California International Gateway (SCIG), an intermodal facility for transfer of cargo from the Port of Los Angeles to the Alameda Corridor rail line. The Los Angeles/Orange Counties Building and Construction Trades Council plans to be a lead supporter for this controversial project, which the Los Angeles Board of Harbor Commissioners will consider approving in 2012 or 2013.

## **Mayor of Los Angeles Brags about Parade of PLAs**

A press release issued on June 28 by the office of Mayor Antonio Villaraigosa in conjunction with the signing of the Port of Los Angeles PLA stated the following: “Since Villaraigosa took office in 2005, City Departments including Public Works, the Port, and Los Angeles World Airports (LAWA) have entered into nearly 30 PLAs covering over 180 projects. Previously, only 3 PLAs were signed covering a total of 3 projects.”

## **Los Angeles Community College District Confirms PLAs Lurk Near Corruption**

In February, the Los Angeles Times published a six-part series on astounding corruption and waste in the college’s construction program, including “poor planning, frivolous spending and shoddy workmanship.” The expose barely mentioned the college’s district’s PLA and its impact on construction. When the college governing board approved the PLA in 2001 over the objections of ABC and the CFEC, gloating union leaders declared it “will provide for the use of union workers for the massive project. As with other PLAs in California this will help ensure that the community college projects will be completed on time, on budget and with few labor issues.”

## **Contractors Fail to Follow Labor Laws under PLA at Los Angeles Unified School District**

The Associated Builders and Contractors - California Cooperation Committee (ABC-CCC) sent a letter to the Director of the Department of Industrial Relations (DIR) on March 1 requesting the agency to completely revoke approval of the school district’s Labor Compliance Program or – as a milder alternative – withdraw the special status granted to the Labor Compliance Program. The letter and exhibits with the letter showed that LAUSD failed to monitor contractor compliance as required by state law and failed to take enforcement action after learning about numerous contractor labor law violations identified by ABC-CCC on the Valley Region High School #5 project (a project built under a PLA). Under the special status given by the DIR to its Labor Compliance Program, LAUSD is able to have a higher prevailing wage threshold, exempt itself from enforcement fees to the DIR, and collect wage and penalty assessments.

## **Court Rejects Union Lawsuit Challenging PLA Ban at Palmdale Water District**

On June 10, a U.S. District Court judge dismissed a lawsuit against the Palmdale Water District filed by multiple parties, including the Los Angeles/Orange Counties Building and Construction Trades Council, challenging a fair and open competition policy established by the board of directors in October 2010. This was the first legal challenge in California to a fair and open competition policy.

## **Pasadena Unified School District Falls to a PLA**

Following a special study session on October 18, the school board voted 7-0 on October 25 to negotiate a PLA with unions for future projects funded by Measure TT, a \$350 million bond approved by 75% of voters in November 2008. Staff recommended a project cost threshold of \$2 million.

### **Exposition Metro Line Construction Authority Approves PLA in Tricky Fashion**

In an underhanded maneuver to approve a PLA with minimum resistance from contractors, the Exposition Metro Line Construction Authority (in Los Angeles) put out a 48-hour advance notice for a “Special Board Meeting” on a Friday afternoon – March 18. Hidden in the staff report for Agenda Item 6(f) – Award of the Phase 2 Design-Build Corridor Contract to Skanska/Rados, Joint Venture, and authorize a Limited Notice-to-Proceed – was authorization of the Chief Executive Officer (CEO) to “execute a Project Labor Agreement (PLA) with the Los Angeles/Orange Counties Building and Construction Trades Council, substantially the same as shown in Attachment A, and incorporate it into the Expo Phase 2 Design-Build Corridor Contract.” Although the Board had directed its staff in December 2010 to meet with small business representatives for the development of fair PLA language, such a meeting never occurred. Despite opposition from a coalition of small business groups and professional associations representing a diverse set of constituencies in Los Angeles County, the authority board approved the PLA. Phase 2 is expected to cost \$1.5 billion.

### **PLA Does Not Ensure Labor Peace in City of Long Beach**

On October 3, representatives of Carpenters Union Local 1506 began picketing the Long Beach airport because the City of Long Beach and the Los Angeles/Orange County Building and Construction Trades Council did not include their union as a signatory to the PLA on the \$45 million Long Beach Airport Modernization Project. The Long Beach City Council approved this PLA in August 2010.

### **Port of Long Beach Loves PLAs and Union Bosses**

On November 15, the Long Beach City Council voted 7-0 (with two absences) to accept a report from staff on their plan to negotiate a PLA for the \$1 billion construction of the Gerald Desmond Bridge.

Also concerning the Port of Long Beach, the Board of Harbor Commissioners voted 4-0 (with one absence) at its March 14 meeting to spend \$2500 on sponsorship of Richard Slawson’s Retirement Celebration, an event estimated to cost \$50,000, according to the funding request to the Port from the Richard Slawson Retirement Committee. For 16 years, Slawson was the top official of the Los Angeles/Orange Counties Building and Construction Trades Council.

### **City of Baldwin Park Approves First PLA**

On November 2, the Baldwin Park City Council voted to approve a PLA for the city’s \$6 million Transit Center Parking Structure. The staff report on the item hinted at internal discomfort with

some provisions that unions demanded in the PLA and the potential effects of the PLA on costs, on-time completion, and local hiring.

### **City of El Monte Will Require Contractors to Sign PLAs**

The El Monte City Council has instructed staff to negotiate a PLA for future city projects.

### **Unions Target San Bernardino Community College District for a PLA**

On September 29, the governing board held a study session on PLAs, or what is being called a “Community Benefit Agreement” for construction funded by Measure P, a \$190 million bond approved by 63% of voters in November 2002, and by Measure M, a \$500 million bond approved by 67% of voters in February 2008. The staff presentation included a proposal for an alternative fair PLA.

### **School District in Huntington Beach Seeks Bond Measure with Fair and Open Competition**

On December 6, the school board of the Ocean View School District (in Huntington Beach) voted for a resolution stating that “the District will continue to maintain and adhere to the practice of an open and competitive bid process for all construction and/or modernization projects.” The staff report associated with the resolution stated that “The District will not enter into any Project Labor Agreement (PLA) or Community Workforce Agreement (CWA), which may have a negative impact on potential non-union contractors or workers.” This resolution is the first in a new campaign led by the Coalition for Fair Employment in Construction to protect fair and open competition for taxpayers who pay for school construction. The Ocean View School District will ask voters to approve a bond measure for construction on the November 2012 ballot.

### **City of Costa Mesa Prepares Proposed Charter with Fair and Open Competition Language**

A proposed charter on the June 2012 ballot in the City of Costa Mesa is expected to include a Fair and Open Competition provision.

### **Apprentices Lose Court Challenge to PLA at Rancho Santiago Community College District**

On April 18, the U.S. Supreme Court denied an appeal from ABC apprentices of a 2010 decision from the U.S. Ninth District Court of Appeals in *Johnson et al. v. Rancho Santiago Community College District* that upheld the PLA approved in 2003 for construction at the college district funded by Measure E, a \$337 million bond approved by 64% of voters in November 2002. The 9<sup>th</sup> Circuit’s decision appeared to expand the scope of the U.S. Supreme Court’s *Boston Harbor* decision in 1993 that allowed governments to enter into PLAs as a “market participant.”

### **Fair and Open Competition Measure Qualifies for Ballot in City of San Diego**

On September 21, the San Diego City Clerk announced that a proposed ballot measure for a Fair and Open Competition ordinance in the City of San Diego qualified for the June election ballot. It was the first ballot measure to qualify with petitions in the City of San Diego since 1998. The well-organized, experienced campaign executive committee of local business owners and association representatives submitted the petitions on September 2, well ahead of the deadline, with far more signatures than necessary, and yielding a very high rate for signature validity. Because San Diego is a charter city, this ordinance would be effective if voters approve it.

### **San Diego Unified School District Defends PLA with Court Victory and Phony Study**

One day after construction groups released a March 9 report showing that the school district had failed to meet its goals for employment under its PLA for \$2.1 billion in school construction, the school board voted to approve a contract for an independent study of PLA performance. On December 5, construction groups released another report detailing the failures of the PLA. On the following day the school district released the independent study (cost to the district: \$71,825) claiming the PLA was close to achieving its local hiring goals and would reach operational efficiency in less time than the five years it took LAUSD to have an effective PLA. The study acknowledged fewer bidders under the PLA but alleged that contractors are absorbing increased costs from the PLA by accepting lower profit margins. (Sounds like a socialist dream come true!) Construction groups then countered the study with an analysis rebutting the methodology used to reach these conclusions. Truth is, the school board's 2009 decision to require SDUSD contractors to sign a PLA was political, and the PLA will only terminate when San Diego voters elect fiscally responsible school board members.

Meanwhile, a California Appeals Court issued a decision on May 18 rejecting a lawsuit filed by Associated General Contractors (AGC) of San Diego contending that the PLA for San Diego Unified School District improperly intruded on the state's regulatory authority over apprenticeship programs and violated the state's prevailing wage law. The court decision quoted a long explanation from a school board member about why the district should require contractors to obtain their apprentices from union programs.

### **San Diego Unified Port District Looks at PLA Proposal for Convention Center Expansion**

Construction unions in San Diego want a PLA on the San Diego Unified Port District's proposed \$753 million Phase 3 expansion of the City of San Diego Convention Center. Contractors signed a PLA to work on the previous convention center expansion in 1999.

It is unclear which local agency would vote to authorize the PLA: representatives of both the Unified Port of San Diego and the San Diego Convention Center Board of Directors claim authority for this decision. On January 10, the Coalition for Fair Employment in Construction (CFEC) announced its opposition to the proposed San Diego City Council appointment of appointment of Bob Nelson, chairman of the San Diego Convention Center Corporation, to the Unified Port of San Diego's Board of Commissioners. Nelson had indicated support for a PLA on the convention center expansion. Nelson was appointed on a 6-2 vote.

When the San Diego Chapter of the Construction Management Association of America (CMAA) scheduled a January 20 meeting about the convention center project and featured speakers who supported a PLA, Eric Christen of the CFEC asked to be a panelist to present an opposing view. The group denied his request. Then, the same group scheduled a meeting on April 8 titled “Working with Project Labor Agreements” and featuring a panel consisting of PLA advocates and representatives of firms that administer PLAs. Christen again demanded to speak with an opposing view and sent out a notice explaining why he considered his request to be reasonable. His request was again denied, but he attended the meeting with other PLA opponents, handed out anti-PLA material, and organized tough questioning of the panelists.

### **Election Results Brings PLA Threat to Southwestern Community College District**

After the November 2010 election resulted in a pro-union majority on the governing board of the Southwestern Community College District (in Chula Vista), unions pushed for the college to require contractors to sign a PLA for construction funded by Proposition R, a \$389 million bond approved by 71% of voters in November 2008. Skirmishes on the PLA proposal continued throughout 2011 behind the scenes and occasionally in the news media.

### **Proposed Escondido and El Cajon Charters Likely to Protect Fair and Open Competition**

A proposed charter on the November 2012 ballot in the City of Escondido (the fourth most populous city in San Diego County) is expected to include a Fair and Open Competition provision. A proposed charter on the June 2012 ballot in the City of El Cajon (the fifth most populous city in San Diego County) is also expected to include a Fair and Open Competition provision.

### **Rumors Abound about PLA Threats at Other California Local Governments**

ABC received additional reports of possible PLA activity at the **Santa Ana Unified School District**, the **Anaheim Unified School District**, and the **Sweetwater Union High School District (in Chula Vista)**.

### **Greenmail (Union-Backed Environmental Permit Extortion)**

#### **Bill in Legislature Would Suppress Greenmail and Union CEQA Abuse**

ABC of California has been collaborating with Assemblywoman Shannon Grove (R-Bakersfield) on a bill that would rein in the rampant practice of union “greenmail,” or environmental permit extortion. **Assembly Bill 598** states that only the Attorney General of the state, as the duly elected representative of the people, can challenge a government decision under the California Environmental Quality Act (CEQA). In other words, the elected Attorney General becomes the check and balance to protect the people when their government approves projects or activities without properly assessing environmental impact.

Organizations and individuals are brazenly exploiting the provisions and protections of CEQA to block and delay proposed projects to achieve objectives unrelated to environmental protection. In particular, ABC of California is frustrated by the abuse of CEQA by construction trade unions and union-related organizations (such as California Unions for Reliable Energy – CURE) to delay projects until private developers agree to require their contractors to sign Project Labor Agreements with those same unions. AB 598 would foil the plots of unions to block construction projects with environmental complaints until the developers agree to require their contractors to sign PLAs. It is a bold and clear CEQA reform that highlights to the people of California how their environmental protection law is being twisted for ulterior motives.

### **Sutter Health in Elk Grove under Construction without a PLA**

Sutter Health began construction of its Elk Grove facility (now proposed at \$200 million total) without a PLA, with an ABC member as the electrical subcontractor for the first building, a \$10.8 million ambulatory surgery center. Site work has also begun for a larger hospital building. The Coalition for Fair Employment in Construction (CFEC) and ABC worked for three years to make the Elk Grove City Council and the citizens of Elk Grove aware of potential union greenmail against this project.

### **Unions Delay Solar Power Plants to Win PLAs**

The Global Warming Solutions Act of 2006 (Assembly Bill 32) requires California's electric utilities to use "renewable" energy to produce 20 percent of their power by 2010 and 33 percent of their power by 2020. Various companies have proposed large solar thermal power plants in the California deserts. For most of these projects, a group called California Unions for Reliable Energy (CURE) has hired a law firm, Adams Broadwell Joseph & Cardozo, to use environmental objections to slow down and increase the cost of the permitting process as an extortion tactic to win a PLA from the developers. CURE has interfered with the approval process of most of the solar thermal power plants proposed in California and has won PLAs from several solar power developers. A Los Angeles Times article in February 2011 reported on this practice.

### **CURE Loses Environmental Lawsuit but Still Wins PLA on Solar Project**

On December 30, 2010, California Unions for Reliable Energy (CURE) filed a lawsuit to challenge the California Energy Commission's approval of the Tessera Calico Solar Project in San Bernardino County. On April 13, 2011, the State Supreme Court denied to hear the appeal of a lower court decision upholding the review process for the project.

While this seemed like a victory against greenmail, new owners of the project (K Road Sun) were apparently more willing to surrender to CURE and sign a PLA. In an August 5, 2011 press release, CURE and K Road Calico announced a "collaboration" in which K Road Calico would implement "specific measures" to protect plants, wildlife, water, and worker health and safety. CURE promised "as part of the alliance...to work with K Road Calico as it finalizes its permits and executes contracts for the sale of power to California consumers."

Also, the press release noted another condition of the deal (the condition that really mattered):

*The K Road Calico Solar Project will be constructed using union labor, creating up to 700 jobs at the peak of construction activities. In addition, the project will create up to 112 permanent jobs associated with ongoing operations and maintenance of the facility. K Road Calico's construction contractor will negotiate a Project Labor Agreement with local unions for the installation of both the planned PV and SunCatcher capacity at the project. "Project Labor Agreements such as the one that will be negotiated between K Road Calico's contractor and local unions help to further the interests of project developers, contractors, workers and local communities alike," stated Kriegel. K Road's Managing Partner Gerrit Nicholas echoed this sentiment, stating "PLAs ensure that projects like K Road Calico will promote the creation of high-quality, well-paying jobs for local workers, particularly the IBEW Locals 477 and 47, and that the construction of California's renewable energy future will be performed in a safe and efficient manner."*

Notice how CURE was able to get representatives of the developers to speak in support of PLAs.

### **Merit Shop Exposes Union Agenda behind Objections to San Bernardino Solar Plant**

On February 8, Eric Christen of the Coalition for Fair Employment in Construction and Jackie Nutting of the ABC Southern California Chapter spoke before the San Bernardino County Board of Supervisors in opposition to environmental objections of the IBEW filed in an attempt to impede the county's progress in developing a solar plant in the Mohave Desert. The Board of Supervisors voted to continue the development process in spite of the obviously phony bogus environmental objections. The controversy received extensive local news media coverage.

### **ABC of California Decries Greenmail in Los Angeles**

In an opinion piece in the January 7 Los Angeles Business Journal, ABC of California explained why private-sector developers agree to the inflexibility and cost of PLAs. The column urged the state legislature and governor to reform CEQA and restore the law's original intent of environmental protection. It encouraged developers to adopt a plan against greenmail threats that includes the following actions: (1) strive to produce an environmental impact report that will withstand every union objection thrown at it; (2) perform a thorough analysis of legal strategies commonly used by the unions' law firms to reveal a pattern of exploiting specific weaknesses in environmental impact reports and hiring specific experts; (3) allow for additional time in construction planning to deal with potential delays as courts consider and reject the unions' baseless environmental lawsuits; and (4) stop perpetuating the problem by participating in press conferences and other media events to celebrate their surrender to union extortion, and instead expose to the public (openly or quietly behind the scenes) the underhanded scheme for a PLA.

### **ABC Exposes Greenmail against Proposed Trucking Facility in Visalia**

The February 8 Visalia Times Delta and Tulare Advance Register published an opinion piece from Russell Johnson, Government Affairs Director of the ABC Central California Chapter,

explaining greenmail in the context of a Teamsters Union environmental lawsuit to prevent a trucking company from building a new facility in Visalia.

## **Unions Block Approval of Hotel in Santa Cruz Using California Coastal Commission**

On August 11, the California Coastal Commission voted 6-4 not to grant an exception to Barry Swenson Builders to allow the proposed La Bahia Hotel in Santa Cruz to exceed a standard height limit. Unions used this and other environmental objections as leverage with their long-standing demands for the developer to sign a PLA on the project, which has been in the permit process for several years.

## **Prevailing Wage: State of California**

### **ABC of California Proposes Comprehensive Reforms of Prevailing Wage Laws**

ABC of California has sponsored two identical bills in the California State Assembly and California State Senate to reform the state's laws concerning government-mandated construction wage rates ("prevailing wage"). ABC of California contends that these reforms will encourage economic growth and job creation by eliminating the government requirement that contractors pay inflated and inaccurate state-mandated construction wage rates on private projects. In addition, local governments should have the right of local control to establish their own prevailing wage policies that more accurately reflect local market conditions.

- **Assembly Bill 987 and Senate Bill 727** restore a reasonable definition of a "public work" by clarifying when construction is actually being done on a public work and by repealing provisions of law added during the administration of Governor Gray Davis that distorted the definition of "public work." These bills increase a cost threshold for prevailing wage that was set in 1931 and persists today. The bills give local governments the right to establish their own prevailing wage policies for local projects. It defines public work based on a contract, rather than on a project.
- **Assembly Bill 988 and Senate Bill 725** give the state a means to calculate and determine more accurate state-mandated construction wage rates for each trade within various regions of the state. These bills also restore the personal privacy of construction workers by ending the ability of union-affiliated private organizations to obtain addresses of individual employees from payroll records possessed by the government.

Bob Balgenorth, president of the State Building and Construction Trades Council, attacked these bills in a column in the June 20 Bakersfield Californian newspaper, and ABC of California responded to his claims in the July 18 Bakersfield Californian.

## **Unions Form Group to Oppose Prevailing Wage Exemptions in Charter Cities**

Construction unions have founded an organization (“Smart Cities Prevail!”) to debunk every claim that charter cities save money when they do not require their contractors to pay state-mandated construction wage rates (so-called prevailing wage rates). The organization is ironically funded by payments incorporated into state mandated prevailing wage rates. Here is the group’s web site: <http://www.smartcitiesprevail.org>

## **Developers Discouraged by Court Decision Expanding Prevailing Wage to Private Projects**

Residential developers struggled with the interpretations and significant financial implications of a December 21, 2010 California Appeals Court decision (*Azusa Land Partners v. Department of Industrial Relations*) that expands the definition of “public works” to an entire development project if the developer gets funding from a Mello-Roos bond issued by a Community Facilities District, even if the developer uses the funds for only some of the contracts. As a result, contractors must pay state-mandated construction wage rates on many more construction projects within a typical development project. On March 2, the California Supreme Court denied a petition to review the lower court decision. Despite editorials from several California newspapers calling for the legislature to rectify the court decision, only ABC of California has sponsored legislation (AB 987 and SB 727) that would rectify this court decision.

## **Contractors Must Pay Prevailing Wage Rates on Private Development in Marina**

On January 10, a California Appeals Court issued a decision in *Monterey/Santa Cruz County Building and Construction Trades Council v. Cypress Marina Heights* concluding that contractors must pay prevailing wage rates on the Marina Heights residential development project because the City of Marina Redevelopment Agency acquired the land from the Fort Ord Reuse Authority, which has an ordinance requiring contractors to pay prevailing wage rates.

This case featured the declaration of Ron Chesshire, former president of the Monterey/Santa Cruz Building and Construction Trades Council, that if the Marina Heights project “is bid on a non-prevailing wage basis, many union-signatory contractors will either not bid on the work (because they correctly believe such bids would likely be futile), or if they bid will be less likely awarded the work.”

Unions – in league with the Mechanical Contractors Council of Central California – filed lawsuits in 2006 and 2007 against various entities and the contractors of entities that had acquired land originally within the jurisdiction of the Fort Ord Reuse Authority, including Marina Community Partners, Shea Properties W.L. Butler Construction, Target Corporation, Marina Redevelopment Agency, CMH, and East Garrison Partners. In 2008 a Monterey County Superior Court judge ruled in favor of the unions.

The Fort Ord Reuse Authority resolved the ambiguity of its policy in 2007 with an amendment to its ordinance to state that the prevailing wage “shall be paid to all workers employed on the first generation construction performed on parcels subject to the Fort Ord Base Reuse Plan” including “work performed . . . by contract with a FORA member or a FORA member agency including their transferees, agents, successors-in-interest, developers or building contractors.”

### **Unions Convince Court that a Rent Credit Makes a Hotel a Public Works Project**

On July 26, a California Appeals Court issued a decision in *Hensel Phelps Construction Co. v. San Diego Unified Port District* ruling that contractors should have paid their employees state prevailing wage rates for work on a Hilton convention hotel project at the Port of San Diego.

The project was a 30-story, 1190-room hotel estimated to cost about \$350 million to build. It was built by Hensel Phelps exclusively with private funding, and the hotel was intended to be privately owned and managed. The Port of San Diego amortized \$26.5 million in up-front rent credits (resulting in a \$46.5 million rent credit) for the hotel.

The Carpenters/Contractors Cooperation Committee, Inc. (CCCC) and Southern California Labor/Management Operating Engineers Contract Compliance Committee asked the DIR to declare the project as “public works” under Labor Code 1720 because of the rent credit, thus forcing the general contractor and subcontractors to pay workers the inflated prevailing wage. Litigation began after the Director of the Department of Industrial Relations (DIR), John Duncan, issued a determination on April 1, 2008 that the project was a public works project and thus subject to the state’s prevailing wage law because of the rent credit. A San Diego Superior Court judge ruled in favor of Hensel Phelps.

### **Governor Brown Signs Bills to Expand Prevailing Wage Coverage**

Over the opposition of ABC of California, Governor Brown signed the following bills in 2011 to expand prevailing wage coverage to certain kinds of private construction work:

- On October 9, Governor Brown signed **Assembly Bill 514**, which expanded the definition of “public work” to include the hauling of material from job sites to recycling facilities, thus requiring contractors to pay prevailing wage rates to workers involved in that activity.
- On September 27, Governor Brown signed **Assembly Bill 900**, the “Jobs and Economic Improvement through Environmental Leadership Act of 2011.” This bill was gutted and amended on September 8 to exclude, under certain conditions, development projects of \$100 million or more from some provisions of the California Environmental Quality Act (CEQA). The bill was designed to expedite approval of a proposed professional football stadium in the City of Industry and squelch local opposition. Construction unions were primary supporters of the bill because they have a commitment from the stadium developer for a PLA. ABC of California opposed the bill because it required contractors to pay prevailing wage rates on purely private projects.

- On October 9, Governor Brown signed **Senate Bill 136**, which expands the definition of public works to include “energy service contracts” with the state or with local governments. Under this new law, construction or maintenance of renewable energy generating capacity or energy efficiency improvements is subject to prevailing wage requirements if the project is on the property of the state or a local government, and either more than 50 percent of the energy generated is purchased or will be purchased by the state or a local government, or the energy efficiency improvements are primarily intended to reduce energy costs that would otherwise be incurred by the state or a local government. The bill was pushed by construction unions, and the concept had been publicly supported by Chevron Energy Solutions.

## Prevailing Wage: California Local Governments – North to South

### Unions Fight Numerous Local Efforts to Take Control of Prevailing Wage Policies

- **Redding, Paradise, Colusa, and South Lake Tahoe:** Unions fought and derailed proposals backed by local community activists and city council members in various North State general law cities to put charter proposals before voters that would allow these cities to establish their own prevailing wage policies for purely municipal projects.
- **Chico:** Unions responded aggressively against a proposal from local business groups for the city to consider using its charter authority to establish its own prevailing wage policy for purely municipal projects. Exceptions to the state prevailing wage law are opposed by a solid majority on the Chico City Council.
- **Auburn:** Unions are the main opposition to a proposed charter that would allow the city to establish its own prevailing wage policy for purely municipal projects. The city council voted 5-0 on September 12 to put the charter on the June 2012 ballot.
- **Folsom:** Unions successfully intimidated the city council from voting to allow the city to use its charter authority to establish its own prevailing wage policy for purely municipal projects.
- **Tulare:** The Carpenters Work Preservation Fund (a Labor-Management Cooperation Committee) filed a lawsuit in July 2010 to prevent the city from implementing its current prevailing wage exemption policy on construction of its Domestic Wastewater Treatment Plant. The city dealt with this litigation through 2011.
- **Bakersfield:** Proposals circulated to allow the city to use its charter authority to establish its own prevailing wage policy for purely municipal projects.
- **Rancho Palos Verdes:** A well-funded union campaign overwhelmed and crushed a proposed charter that would have allowed the city to establish its own prevailing wage policy for purely municipal projects. On March 8, 73% of voters rejected the charter, which was placed on the ballot with a 5-0 vote of the city council.

- **Irvine:** On May 10, the Irvine City Council voted 3-2 to end its policy exempting its purely municipal construction work from state prevailing wage mandates. Unions had aggressively pushed to terminate the exemption.
- **Costa Mesa, Escondido, and El Cajon:** Voters in these three cities will consider proposed charters in 2012 that would allow these cities to establish its own prevailing wage policies for purely municipal projects.
- **Oceanside:** Unions continue with their efforts to debunk claims that the City of Oceanside is saving millions of dollars for taxpayers with its prevailing wage exemption adopted in 2010.

## **Discriminatory Local Hire Policies at California Local Governments**

### **Unions Press Fresno Unified School District to Adopt Unneeded Local Hire Policy**

In March 2011, ABC learned that the IBEW and Carpenters Union were pressing the Fresno Unified School District to adopt a local hiring policy for construction funded under a \$280 million bond approved by voters in November 2010. At the school board's March 23 meeting, staff proposed a revision to the district's bidding policy "in response to the Board's request that Measure Q bond proceeds help promote the local economy and specifically that bond projects be staffed with at least 50% local employees." The language did not contain discriminatory language. ABC subsequently obtained public records that showed no evidence that out-of-area contractors were working on school district construction.

### **Local Hiring Policy in City of San Francisco Leads to Leftwing Catfight**

Unions and advocacy groups in San Francisco for minority employment spent the first half of 2011 sparring at each other regarding a local hiring ordinance approved by the San Francisco Board of Supervisors on December 14, 2010. Some organizations in San Francisco assert that union hiring hall practices and PLAs do not result in adequate employment of San Francisco residents on San Francisco construction projects. Assemblyman Jerry Hill, a Democrat from San Mateo County, added controversy by introducing a bill (Assembly Bill 356) that would retaliate against local governments that implemented local hiring requirements. ABC of California supported the bill and Republicans voted for it in a committee hearing, but it was ultimately placed on the inactive file.

### **City of Santa Rosa Abandons Local Hiring Proposal**

ABC learned on January 3 that the Santa Rosa City Council would consider a local hire ordinance for city construction projects. The proposed policy was similar to the City of Stockton's local hire ordinance, enacted in 2009, that contains discriminatory language regarding new state approved apprenticeship programs. ABC Golden Gate Chapter sent a letter to the Santa Rosa City Council in opposition to this language. The city council scheduled a study session "regarding the background and analysis of a potential ordinance that would require hiring of local labor for public works contracts" on February 1, but then postponed it to February 15. In the end, the study session was never held and the local hiring ordinance was not considered.

## Apprenticeship Issues

### Union Lobbyists Tell Legislative Democrats to Oppose Needs Test Repeal

ABC of California sponsored **Senate Bill 362**, which would have repealed the “needs test” enshrined in state law through Assembly Bill 921, signed into law in 1999 by former Governor Gray Davis. The needs test allows apprenticeship programs to maintain state or regional monopolies on vocational training for certain construction trades, as a result limiting training opportunities for Californians seeking career technical education through state-approved apprenticeship programs. ABC’s bill would have also ensured greater contractor compliance with apprenticeship laws by implementing a unanimous request from the California Apprenticeship Council to increase financial penalties for contractors that willfully fail to provide on-the-job training of apprentices on public works construction projects.

The bill was defeated on a party-line vote in the Senate Industrial Relations Committee on April 28, but not before the Democrat chairman of the committee said he was troubled about how the unions opposed this bill but supported the repeal of the needs test in 2008 when they thought they had a deal to enact a PLA policy for the state.

### State Recognizes Apprenticeship Programs for Photovoltaic Installation

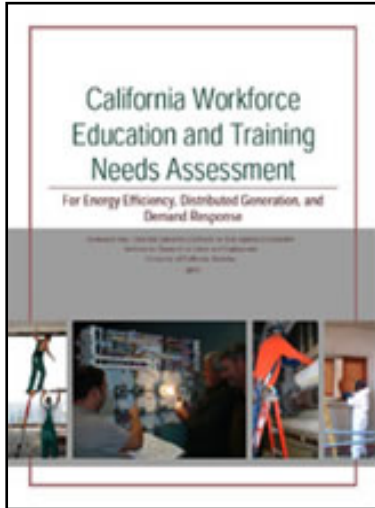
On March 11, after a series of hearings, the California Division of Apprenticeship Standards (DAS) released guidelines for apprenticeship programs in photovoltaic installation. DAS noted that its recognition of a trade for apprenticeship purposes does not set prevailing wage rates, but simply allows the state to recognize and regulate apprenticeship programs and the curriculum for those programs. ABC chapters have submitted applications to the DAS for approval of photovoltaic installation apprenticeship programs.

### Bill Setting Dangerous Precedents for Apprenticeship Training Falters Early

A bill regarding apprenticeship that was opposed by ABC of California failed to reach committee consideration. **Senate Bill 569** would have given unionized electrical workers a monopoly on the construction of alternative and renewable fuel and vehicle infrastructure funded by California Energy Commission loans. It would have expanded the definition of electrical work beyond the standard definition in Labor Code 3099, thus expanding the number of workers who would have to obtain state certification. It would have limited the number of contractors that could work on these types of projects by requiring contractors to have a C-10 electrical license (thus eliminating C-46 solar installation licensed contractors and contractors with other applicable licenses). It would have required apprentices on these types of projects to be enrolled in a joint (union) electrical program. It would have established a “needs test” with the consequence of restricting apprenticeship training on these types of projects to one union program.

### UC Labor Program Issues Green Jobs Report Slanted Toward Unions

Even as its state taxpayer funding whittled away to almost nothing (down from \$6 million in 2000), the University of California Miguel Contreras Labor Program benefitted in 2011 from a \$1.25 million contract from the California Public Utilities Commission and the California Energy Commission for research and reports. The UC Labor Program released a report on March 17 entitled “California Workforce Education & Training Needs Assessment for Energy Efficiency, Distributed Generation, and Demand Response.”



The report claims California suffers from a long-term structural bifurcation of the state’s [http://www.irlle.berkeley.edu/vial/publications/WE&T\\_NeedsAssessment\\_ExecutiveSummary.pdf](http://www.irlle.berkeley.edu/vial/publications/WE&T_NeedsAssessment_ExecutiveSummary.pdf) labor market into well-paid, higher-skill jobs and low-wage, lower-skill jobs. According to the report, jobs created by the investments in green jobs will mimic the wage disparities seen in the rest of the economy unless there are “specific policy interventions.” It suggests the number of unemployed construction workers negates the need for specialty training programs targeted at workers entering the construction industry. Instead, the state should encourage training of workers already in the workforce through programs within comprehensive multi-year apprenticeship programs. It says the industry is plagued with “low-road contractors” and poorly-trained and

poorly-paid workers. It contrasts this situation to the commercial lighting industry, which has a larger unionized contractor base.

On December 23, the California Construction Industry Labor Management Cooperative Trust and the Greenlining Institute submitted comments to the California Public Utilities Commission using this study as a basis to argue for prequalification, prevailing wage requirements, and other standards for contractors as part of proposed changes to Utility Energy Efficiency Portfolios for the 2013-2014 Transition Period (“Programmatic Guidance”) for commercial, lighting, codes and standards, and emerging technologies programs. The Greenlining Institute comments explicitly call for Project Labor Agreements in a footnote defining its proposal for “High Road Agreements” or “Community Benefit Agreements.”



## Union Harassment

### LASER is Dead

Since the 1990s, a small operation based in Gridley (in Butte County) called Legal and Safety Employer Research, Inc. (LASER) has harassed Merit Shop contractors across the country. It even sent a letter to every member of the ABC National Board of Directors asking dozens of invasive questions under the pretense of doing “research.” In response to

LASER’s antics, ABC National produced a 53-page guidebook in 2000 entitled *Building And*

*Protecting Your Company's Reputation: A Guide to Addressing Internet-Based Techno-Terrorist Campaigns Against Your Company.* It described LASER as follows:

LASER's modus operandi is to glean tidbits of information from public records and then weave a distorted and often misleading story around this information, creating a negative perception of the merit shop firm. Once this conjectural propaganda against the company is created, LASER then may target current and potential clients of the company, employees of the company and members of the community with distorted data.

LASER also is a master at using the threat of potential litigation to attempt to frighten potential clients against contracting with the propaganda-targeted firm. In addition LASER threatens the potential client that LASER will send out fliers to all "employees and residents" in a particular community. It appears that LASER believes that by creating a negative image of the merit shop firm and then threatening to link the client's name to the construction company with consumers in the community, it will create fear in the mind of the client.

On January 6, a Merit Shop delegation passed through Gridley and decided to visit LASER headquarters. It turned out the LASER office was occupied by a local newspaper, whose receptionist reported that LASER had moved to a smaller space in the past year and then closed up shop late in 2010. Sure enough, the LASER web site ([www.laser-inc.com](http://www.laser-inc.com)) is now for sale.

## Addendum: ABC National Accomplishments in 2011

### On the Offense

1. Advancing its 50-State Strategy project, ABC National helped to coordinate bans on government-mandated Project Labor Agreements (PLAs) through legislation or gubernatorial executive orders in seven new states in 2011, making a total of eleven states with Fair and Open Competition policies. See [www.theTruthaboutPLAs.com](http://www.theTruthaboutPLAs.com) and [www.Facebook.com/TheTruthAboutPLAs](http://www.Facebook.com/TheTruthAboutPLAs) for more information.
2. By encouraging multiple Congressional votes on PLA mandates and the Davis-Bacon Act, ABC National achieved three goals: (1) establishing a voting record for members of Congress on key ABC issues; (2) bringing Congressional and public attention to construction labor issues; and (3) establishing precedents for future legislative priorities. The U.S. House of Representatives took three votes on proposals to ban PLA mandates: one lost by three votes, one lost by one vote, and one lost in a tie vote. The U.S. House of Representatives took five votes on proposals to exempt construction projects from federally-mandated construction wage rates under the Davis-Bacon Act. All five were defeated by wide bi-partisan margins.
3. ABC National successfully encouraged 31 members of the U.S. Senate and 170 members of the U.S. House of Representatives to cosponsor the “Government Neutrality in Contracting Act” (S. 119/H.R. 735). House committees held two hearings in Washington and three field hearings on federal PLA mandates and H.R. 735. Additional hearings and votes are expected in 2012.
4. ABC National was a leader in coalitions supporting two bills in the U.S. House of Representatives dealing with labor relations issues. On September 15, in response to National Labor Relations Board (NLRB) interference in the opening of a Boeing manufacturing facility in South Carolina (a Right-to-Work state), the House voted 238 to 186 to pass the “Protecting Jobs from Government Interference Act” (H.R. 2587), which protects the ability of businesses to decide where to conduct business and where to locate jobs. On November 30, the House voted 235 to 188 to pass the “Workforce Democracy and Fairness Act” (H.R. 3094), which reins in the inappropriate regulatory effort of the NLRB to speed up the election procedure for union representation (resulting in “ambush elections”).
5. ABC National held a series of town hall tele-conferences with Presidential candidates and confirmed candidate positions against government-mandated PLAs.
6. ABC National was a leader in coalitions supporting three regulatory reform bills in the U.S. House of Representatives that passed with bipartisan support: (1) the “Regulatory Accountability Act of 2011” (H.R. 3010), which would reform the Administrative Procedure Act (APA) and strengthen existing checks on federal agencies; (2) the “Regulations from the Executive in Need of Scrutiny” (REINS) Act (H.R. 10), which makes the federal rulemaking process more transparent and gives Congress more accountability for the effects of regulations on businesses; and (3), the “Regulatory Flexibility and Improvements Act of

2011” (H.R. 527), which grants additional authority to the Small Business Administration's Office of Advocacy – a federal regulatory watchdog – to establish additional standards to ensure burdens on small businesses are taken into account during the rulemaking process.

7. ABC National played a leading role in a coalition campaign to fully repeal the mandated three-percent withholding on federal government contracts, culminating five years of diligent legislative and regulatory work on the issue.
8. ABC National worked for the introduction of the American Job Builders Act of 2011 (H.R. 1993), new bipartisan legislation to provide tax relief to small and medium sized construction businesses through the expansion of the completed contract method and the elimination of burdensome look-back accounting requirements.
9. ABC National was a leader in a coalition to enact H.R. 4, a bill signed into law on April 14 by President Obama that repeals a requirement in the health care law for businesses to file a 1099 form with the IRS for every vendor to whom they paid more than \$600 a year.
10. ABC National implemented a new “Adopt a Legislator” program to encourage and assist ABC members in developing closer relationships with their members of Congress.
11. In 2011, ABC’s federal Political Action Committee (ABC-PAC) raised more than \$700,000 and contributed more than \$600,000 to 176 pro-business candidates (including 14 from California), 14 leadership PACs, and four national committees. ABC-PAC has set a goal of raising \$1.5 million in 2012, in order to surpass its \$2.1 million record set in the 2007-2008 presidential election cycle.
12. The Free Enterprise Alliance (FEA) increased its online presence by reaching 111,273 fans on [www.HaltTheAssault.com](http://www.HaltTheAssault.com) and by publishing [www.FreeEnterpriseAlliance.org](http://www.FreeEnterpriseAlliance.org), a non-partisan website designed to educate ABC members and the general public on how free enterprise and limited government allow economic growth and job creation.

## **Successful Defense**

1. Numerous proposed PLAs on federal projects were derailed through effective political, public relations, educational and legal strategies, continuing a successful campaign to preserve fair and open competition on federal construction projects despite President Obama’s 2009 executive order encouraging federal agencies to use them. Since 2009, with the assistance of ABC National, ABC members filed four successful protests with the General Accounting Office to stop PLA mandates by four federal agencies. ABC National has also responded to and helped ABC members participate in more than 50 PLA surveys issued by federal agencies to determine the feasibility of a PLA on a federal project.
2. While unable (since the repeal of President George W. Bush’s Executive Order 13202) to restrict the decisions of state and local governments and private entities to require contractors to sign PLAs for federally-assisted projects, to date ABC National has prevented the expansion of Section 7 of President Obama’s pro-PLA Executive Order 13502, protecting

billions of dollars worth of federally-assisted projects from PLA mandates or encouragements.

3. ABC National established a web site to inform the public about union banners meant to damage the reputations of construction users: [www.shameonunionbanners.com](http://www.shameonunionbanners.com).
4. ABC National aggressively responded as a coalition leader against new regulations for persuaders proposed by the U.S. Department of Labor and new regulations for ambush election procedures and workplace posters proposed by the NLRB. ABC National created a supplemental poster for companies to display next to the biased NLRB poster, for when companies are required to post them. (Stay informed on regulatory developments via [ABC Newsline](#) and [www.abc.org/finalregulations](http://www.abc.org/finalregulations).)