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December 8, 2010

To: Mayor Michael D. Antonovich
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Don Knabe

From: William T Fujioka
Chief Executive Officer

MARTIN LUTHER KING, JR. MEDICAL CENTER REPLACEMENT PROJECT MULTI-SERVICE AMBULATORY CARE CENTER PROJECT RECOMMENDATION NO. 4 - AUTHORIZE NEGOTIATION OF A PROJECT LABOR AGREEMENT (ITEM NO. S-1, AGENDA OF OCTOBER 19, 2010)

On November 23, 2010 your Board approved a motion by Supervisor Mark Ridley-Thomas directing, among other things, the preparation of a report back to your Board addressing the following thirteen issues related to a possible Project Labor Agreement (PLA). In addition, we have also addressed seven issues that were identified in a letter sent to each of your offices by members of the Associated Builders and Contractors (ABC).

1. An examination of the impact the PLA could have on non-union employees and how jurisdictional disputes could be quickly resolved

As part of the motion, your Board directed that we confer with representatives of the various building trades. The responses to the following questions regarding how a PLA could affect non-union employees, resolution of jurisdictional disputes, and other issues about PLA's reflect written input we received from the Building Trades Council. As mentioned in our November 9, 2010, report, many issues about the merits of PLA's are the subject of debate in the industry. These responses recognize the existence of divergent views and reflect our best current understanding of these complex issues.

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2. The potential issue of whether a jurisdictional dispute may stop or delay the project, a mechanism to put a very tight limit on the amount of time it takes to resolve the dispute as well as a mechanism to resolve disputes

The process and timing for the resolution of jurisdictional disputes will likely be subject to determination by the procedures in the Plan for the Settlement of Jurisdictional Disputes (the "Plan") which is the National Building and Construction trades Council's (BCTC) long-standing jurisdictional dispute resolution policy. The following is a summary of the process for the settlement of any jurisdictional question.

Prior to construction work beginning on any project covered by a PLA, contractors are required to hold a "Pre-job Conference." At this conference, contractors disclose to all unions the assignments that they intend to make and which classification of worker will be performing specific work on the project. Should a craft union disagree with the assignment that will be made by the contractor, the disagreeing union must first contact its International Union to advise them of a dispute and ask that the matter be set for resolution under the Impartial Jurisdictional Disputes Plan. The dispute is heard under the Plan with a decision being rendered by a neutral arbitrator. The arbitrator's decision is binding on all parties to the dispute for the work involved on the project. At all times, during this process, the assignment, as made by the contractor, remains in full force and effect. This entire process takes approximately 2-3 weeks and is generally completed before any work has begun on the project.

At no time during this process is any delay or stoppage to job progress tolerated or expected.

3. A side-by-side comparison of wages and benefits for a worker under a PLA, versus a worker not under a PLA

Using the example of a plumber classification, the prevailing wage rate, as determined by the California Department of Industrial Relations, is as follows:

BASIC HOURLY RATE	HEALTH AND WELFARE	PENSION	VACATION/HOLIDAY	TRAINING	OTHER PAYMENTS	TOTAL
\$35.89	\$5.95	\$10.52	\$3.03	\$1.27	\$0.47	\$57.13

This prevailing wage is the rate that all employers, both union and non-union, must pay their workers performing plumbing work.

In the case of a union contractor, employees are paid an hourly wage (on their check) of \$35.89 per hour. This is commonly referred to as "the wage component" of the prevailing wage rate. The remaining portion of the prevailing wage, commonly referred to as "the fringe benefit component" of the prevailing wage rate, is then paid to the respective trust funds in the amounts indicated (i.e. \$5.95 per hour worked is submitted by the contractor to the Plumbers' Health

and Welfare trust funds, \$10.52 per hour worked is submitted by the contractor to the Plumbers' Pension trust funds, and so forth).

In the case of a non-union contractor, which does not provide for any health insurance, pension, etc., all of the fringe benefit component of the prevailing wage rate must be paid on the worker's check, in addition to the wage component that he/she already receives. The only exception is the training component, which has to be paid to the California Apprentice Council or to the applicable union training fund. In the example of a non-union plumber working on a project not covered by a PLA, the employee would receive a total taxable hourly wage of \$55.86 on his/her check, and the only fringe benefits paid on their behalf would be \$1.27 for training.

If the non-union contractor under a non-PLA project provides for actual fringe benefits, the cost of those benefits would be deducted from the specific amounts identified above for the individual benefits.

If this same non-union plumber were working on a project covered by a PLA, the employee would receive a total taxable hourly wage of \$35.89 on his/her check, and have \$21.24 paid on their behalf into the various union trust funds for various fringe benefits. If the non-union contractor provides benefits, then the cost of the existing benefits would be duplicated by the contributions to the union trust funds. Attachment A provides a detailed illustration of these various scenarios.

4. If there are going to be union fees involved, what are the benefits associated with these fees? What specifically will the non-union workers receive in benefits or protections in return for contributing dues and money to the trust fund, and if benefits, for how long?

"Dues" are paid by workers who are union members. "Fees" are paid by non-union members instead of paying dues. "Contributions" are made by employees to various trust funds on behalf of workers.

Under a PLA, non-union workers are not required to join the union, but they are required to pay a "representation fee". This fee is less than the amount that a union member would have to pay in dues, and in establishing the representation fee, the unions are legally required to demonstrate that the fee is reasonable given the benefits that a worker would receive. There are a number of benefits that a non-union worker would receive in return for the representation fee. Some unions, for example, provide life insurance and burial benefits. Also, there are services such as negotiating the prevailed wage rates that the unions provide on behalf of union and non-union workers. Also, while working on the PLA covered project, the non-union worker is entitled to representation by union staff in issues such as grievances and matters of safety and work rules. Also, the unions administer the fringe benefits programs on behalf of the non-union workers.

Also, all workers performing construction work under a PLA will have fringe benefit contributions made on their behalf to the various craft union trust funds for the trade in which they work by their employer/contractor; including contributions for health insurance, pension and retirement, vacation and holidays, and training.

The specific rules regarding when employees become eligible for benefits, and the duration of the benefits vary widely based on the rules of individual unions. For a general example, consider the following Health and Welfare benefits of a non-union laborer are as follows:

A new employee will be eligible to start using his health insurance benefits after he works 300 hours over three consecutive months followed by a waiting period during the fourth month. Employees become eligible at the beginning of the fifth month. The worker continues to receive such benefits while working on the job. Upon layoff, the worker has a six month "hour's bank" which entitles the worker to continue to receive those benefits for six months after layoff. While it varies with individual unions, typically health benefits extend to the workers dependents also.

The worker would continue to accrue additional health and welfare benefits if the worker gets another job with any other union plumbing contractor or gets another plumbing job which is covered by a PLA.

While non-union workers working on a PLA-covered project are potentially eligible for training benefits under the training trust fund, it would require that they enroll in a union apprenticeship program, and it is unlikely although possible.

Federal pension laws, the Employee Retirement Income Security Act (ERISA), provide for a five year vesting requirement for pension benefits to become vested. Pension benefits, like health and welfare benefits, are paid on behalf of the worker for each hour worked. As with health and welfare benefits, upon layoff, if the worker gets another job with any other union contractor, or gets another job which is covered by a PLA, the worker will continue to accrue additional pension benefits. An employee does not have to work five consecutive years in order to become vested but can accumulate time towards the overall five year vesting period. If a worker does not accumulate sufficient years to become vested, he/she may not withdraw the contributions made on his/her behalf to the pension trust fund.

As described in the previous question, there is no guarantee that non-union employees would receive actual fringe benefits from their non-union employer. Various surveys reflect that only a relatively small portion of non-union contractors, 12 percent according to the City of Los Angeles' study, provide their employees with bonafide fringe benefits. Labor laws that require the payment of the prevailing wage, provide non-union contractors the option to either provide health insurance, pension, retirement, and training benefits, or pay the stipulated amounts to the employees as part of their wages.

5. Which of those benefits or protections would the non-union workers have gotten with or without the PLA? How will the benefits or protections they will receive from the union under the PLA are (or are not) different from the benefits or returns they would have gotten without a PLA?

If working under a PLA, non-union workers are guaranteed to receive the exact same wage and benefits paid on their behalf as union contractors pay on behalf of their union employees. Without a PLA, there is no requirement that any non-union contractor provide its workers with any actual fringe benefits. Thus, non-union workers may not receive any benefits. As described above, non-union contractors have the option of providing benefits or paying a stipulated amount to their employees beyond their base wages instead of providing benefits. In many cases, the cost of an employee seeking to obtain health insurance as an individual using the cash payment rather than being covered through a group program by his employer results in the employee being without coverage or without adequate coverage.

In addition to the fringe benefits, under a PLA, the non-union worker receives the representation benefits described above.

6. How long does it take an employee to become eligible for the benefits and do the benefits last for a specific period of time?

The eligibility requirements vary between unions. Using the example of a labor described above, a new employee will be eligible to start using his health insurance benefits after he works 300 hours in three consecutive months and completes a waiting period in the fourth month. The worker continues to receive such benefits while working on the job. Upon layoff, the worker will continue to receive those benefits for 6 month after layoff.

For pension purposes, a cumulative five year vesting period is required.

7. If an employee stays with an employer beyond the project, will they have coverage during that period of time?

If an employee working for a non-union contractor obtains health insurance or other benefits while working on a project covered by a PLA, the question of their extended benefits coverage will vary depending on their next work assignment. As described above, using the example of a non-union plumber, if the worker's employer does not provide benefits, and the next project on which he works is not covered by a PLA, then the worker would continue to receive benefits for six months after leaving the PLA project. In most cases, these benefits also extend the worker's dependents.

8. If a worker is paying union dues, what is the wage scale going to be as compared to a union job?

While the exact amount of union dues varies between unions, typical dues are in the range of \$45-50 per month. The "wage scale" is the same whether or not a worker is paying union dues. A worker can either pay the dues directly to the union or can elect to have the dues withheld from his earnings and paid to the union by his employer.

9. Will there be a direct correlation for the community to benefit from any apprenticeship program?

The Local Worker Hiring Program approved by your Board for this project includes all craftsmen on the project including both journeymen and apprentices. Therefore, the local hiring preference and the resulting community benefits would apply to apprentices.

10. Will there be any delay in the project due to training?

There will be no delay in the project due to training. It is the responsibility of the design-builder and its subcontractors to provide a sufficient number of qualified workers to complete the project in accordance with the contract schedule.

11. Will the plan directly benefit the employees and enhance the surrounding community, including a pathway to local hiring and a pathway to on-time project completion and within budget?

As described in more detail in the November 9, 2010, report, the two most frequently mentioned advantages of a PLA from the perspective of an owner, labor stability and work force development, are focused on addressing this question. A PLA facilitates the successful implementation of workforce development programs such as local worker hiring. The Local Worker Hiring Program (LWHP) approved by your Board for this project mandates that at least 30 percent of the California labor hours be worked by residents of the area within five miles of the medical center, or other areas of the County that have excessive rates of unemployment. It also includes a program to encourage hiring of workers with various impediments to employment. PLA's also serves to promote a stable work force, which in turn, helps to assure project completion within the approved budget and schedule.

12. What standards should be established relative to this PLA?

Our November 9, 2010, report listed 19 examples of terms and conditions that are typically addressed in PLA's. As described in the report, if your Board authorizes us to negotiate a PLA, we would develop recommendations for your Board regarding how to address each of these subjects in the PLA before beginning negotiations. Many of these are technical labor relations matters, and

if we are authorized to do so, we plan to utilize outside experts in developing our strategy.

One of the topics included in this list is the matter of a substance abuse policy. In testimony before your Board, it was mentioned that some owners implement a drug testing program as an element of a PLA. Although it is possible to require drug testing through PLA's, at this point our intent is to instead rely on existing drug testing programs required by the unions and by the contractors. Except for special circumstances, usually related to requirements from grant funds, County construction contracts do not require drug testing. Drug testing is considered part of the contractor's overall safety program for the project, and the contractor is responsible for all aspects of safety, and to comply with applicable laws including OSHA and other worker safety regulations.

13. While under a PLA, how can you force a non-union employer to provide healthcare coverage, but the County is prohibited from forcing any non-union employer to provide healthcare coverage?

The question of whether a non-union contractor can be forced to provide healthcare coverage under a PLA has been tested and upheld by the courts as part of various legal actions; including the 1999 case before the California Supreme Court, "ABC vs. SF Airports".

The question regarding limitations on the County's ability to force non-union employers to provide healthcare coverage in other circumstances is currently being researched by County Counsel, and they will be prepared to address this issue during the Board meeting on Tuesday, December 14, 2010.

Associated Builders and Contractors Issues

We reviewed the November 22, 2010 letter (Attachment B) which was sent to each of your offices by members of the Associated Builders and Contractors (ABC) that raised the following list of concerns, and we have provided information in response to their concerns for your reference:

1. Pay union fees into various funds not applicable to the project

Contractors are bound to the PLA for only the PLA covered work they perform. Non-union contractors would pay into various funds on behalf of its employees for work performed on PLA covered projects. Non-union contractors and their employees do not have to pay into any union trust funds once that they leave the project. We have received data from the ABC on this topic which we are reviewing and will be prepared to discuss on Tuesday, December 14, 2010.

2. Eliminate one current employee for every two that are brought onto the job and replace them with union employees

A typical PLA provision would have non-union contractors following a process where they would be able to use their own "core" employees on an alternating one-for-one basis. This provision often allows the non-union contractor to use their own "core" workforce up to a maximum of five core workers per craft for PLA-covered work. The actual number of "core" employees and the terms and conditions of this provision can be addressed as part of negotiating a PLA and can vary widely. This is an important issue for non-union contractors.

3. Double pay retirement and medical benefits or cancel existing plans

This topic was described during testimony before your Board on November 23, 2010. In cases where a non-union contractor has bona fide benefit programs, then the requirement for them to contribute into the union benefits trust funds results in double payments.

This is a hotly debated topic. There is an argument that many non-union contractors do not have bona fide benefits plans, instead having plans with significantly less coverage, or pay their employees the equivalent amounts in cash. If this is true, then the issue becomes insignificant. The issue hinges on how many people are affected by the problem. On the whole, many agencies have concluded that it is not significant and use the standard PLA benefit language, while other agencies do feel that it is significant and look for alternative language.

As described on November 23, 2010, we cannot accurately predict the number of workers on the MACC project that would be affected by this issue. However, on our two most recent large healthcare construction projects, the workforce was more than 90 percent union. For the remainder of the workforce, approximately 10 percent, if we were to apply the conclusion of the City of Los Angeles' study that approximately 12 percent of non-union contractors provide benefits, then approximately 1.2 percent of the work force would be impacted by the issue of double payments.

4. Assume lifelong liability for underfunded union pension plans

This issue concerns whether a non-union contractor who chooses to work on a PLA-covered project and contributes to the union pension plans while working on the project, in so doing takes on a future liability to contribute to those pension plans in the event that the pension plans are found to be underfunded. The rules governing withdrawal liability are found in the Multi-employer Pension Plan Amendments Act of 1980 which amended ERISA. While this is a very complicated and technical matter that is the subject of debate in the context of PLA's, the legislation does provide specific

exemptions to withdrawal liability for the construction industry, and apply to the case of a non-union contractor working under a PLA; assuming that the PLA is the only labor agreement under which the contractor is required to make contributions.

5. Deduct union dues from employees who do not wish to join a union

An employee under a PLA is not required to join a union and may only be required to have dues deducted from his/her pay check if he/she voluntarily joins the union.

A non-union employee under a PLA is legally represented by one of the signatory unions to the agreement. As such, the union may charge "representation fees", but only that amount which compensates the union for actual representation services which are described in Question 4 in the first section of the report. These costs are somewhat less than "member dues".

6. Force all employees to register at union hiring halls

Employees are not required to join a union; however, the contractor is required to ensure that all employees are registered with the appropriate union hiring hall (this is known as the "referral system"). By registering at the union hiring halls, this ensures that all benefits earned by the non-union worker while working under the PLA will be maintained for the individual employee to draw upon.

7. Expose the company to union organizing by newly hired union members

The represented workers dispatched to a non-union contractor would have to become a majority of the workforce and call for an election and, though this is a concern, historically, there is no evidence that this has occurred in Southern California.

If you have any questions, please contact me, or your staff may contact Mr. Jan Takata of my staff at (213) 974-1360, or Mr. David Howard of the Department of Public Works at (626) 300-2300.

WTF:RR:DJT
DPH:mc

Attachments

c: Executive Office, Board of Supervisors
County Counsel
Public Works

**ATTACHMENT A
COMPARISON OF WAGES AND BENEFITS**

	PREVAILING WAGE RATE							Paid to Worker	Paid to Trust Fund
	BASIC HOURLY RATE	HEALTH AND WELFARE	PENSION	VACATION/HOLIDAY	TRAINING ²	OTHER PAYMENTS	TOTAL		
Union Worker	\$35.89	\$5.95	\$10.52	\$3.03	\$1.27	\$0.47	\$57.13		
Non-PLA w/out Employer's Benefits Program	\$35.89	\$5.95	\$10.52	\$3.03	\$1.27	\$0.47	\$57.13	\$35.89	\$21.24
Non-PLA with Employer's Benefits Program	\$35.89	\$5.95	\$10.52	\$3.03	\$1.27	\$0.47	\$57.13	\$55.86	\$1.27 ²
PLA	\$35.89	\$5.95	\$10.52	\$3.03	\$1.27	\$0.47	\$57.13	Varies ¹	\$1.27 ²

¹This number will depend on the type and cost of the fringe benefits provided by the employer. The net hourly rate paid to the employer will equal \$57.13 minus the actual costs of the benefits provided.

²Training contribution is paid to either the California Apprenticeship Council or to the UA training fund.

ATTACHMENT B

November 22, 2010

Dear MTA Board Members Knabe, Molina, Ridley-Thomas, Antonovich, Yaroslavsky, Villaraigosa, DuBois, Fasana, Huizar, Katz, Najarian, O'Connor and Robinson:

I am writing as a member of the MTA's Transportation Business Advisory Council (TBAC) to express my opposition to a Project Labor Agreement (PLA) for MTA projects. I further protest the use of Project Labor Agreements on all Los Angeles taxpayer funded projects.

A PLA virtually eliminates small business from bidding on projects as most are not involved in collective bargaining and under a PLA non-union contractors are mandated to:

1. Pay union fees into various funds not applicable to the project
2. Eliminate one current employee for every two that are brought onto the job and replace them with union employees
3. Double pay retirement and medical benefits or cancel existing plans
4. Assume lifelong liability for underfunded union pension plans
5. Deduct union dues from employees who do not wish to join a union
6. Force all employees to register at union hiring halls
7. Expose the company to union organizing by newly hired union members

With the passage of Measure R and the availability of State bond funds, Metro will be making significant investments in transportation infrastructure. TBAC members would like to have greater participation in Metro's contracting opportunities. Please do not limit small business participation by enacting a PLA on MTA Measure R projects or other projects intended to include small and disadvantaged businesses.

We look forward to working with you. Thank you.