



*Belaboring PLAs:  
A Critique of the Seeler  
Reports*

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## Introduction

Seeler Engineering, a New York firm, has written several reports aimed at determining the benefits to its clients of conducting construction projects under a project labor agreement (PLA). PLAs are agreements between builders and construction unions that are mandated by builders and that require contractors to hire workers through union hiring halls and to follow union rules. The Beacon Hill Institute (BHI) has reviewed five Seeler reports with a view toward assessing the methodology used by their authors. The reports are:

- “Project Labor Agreement Benefits Analysis: City of Rochester, Marina Redevelopment Project, Rochester, New York” (August 2013), <https://beaconhill.org/BHISTudies/PLA2021/PLA-920/CityofRochester.pdf>;
- “Project Labor Agreement Benefits Analysis: Clinton County Plattsburgh International Airport Renovations, Plattsburgh, New York” (August 2017), <https://beaconhill.org/BHISTudies/PLA2021/PLA-920/Plattsburg-Airport-Due-DilligenceStudy-SeelerEngineering.pdf>;
- “Project Labor Agreement Benefit Analysis: City of Ogdensburg, Wastewater System Improvements Project, Ogdensburg, New York” (March 2019), <https://beaconhill.org/BHISTudies/PLA2021/PLA920/OgdensburgWasteWaterTreatmentPlantDueDilligenceStudy-SeelerEngineering.pdf>;
- “Project Labor Agreement Benefit Analysis, Olympic Regional Development Authority, Olympic Center Modernization, Lake Placid, New York” (January 2020), <https://beaconhill.org/BHISTudies/PLA2021/PLA-920/Olympic-Center-Final-Draft-Report-2020-01-06.pdf>; and
- “Project Labor Agreement Benefit Analysis: Frank E. Van Lare Water Resource Recovery Facility Capital Improvements Project, Rochester, New York (August 2020), <https://beaconhill.org/BHISTudies/PLA2021/PLA-920/VanLareDueDiligenceStudy-Seeler2020-08-17.pdf>

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

### The Seeler Methodology

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

In its final draft report on the “Olympic Center” project, Seeler analyzed 20 existing collective bargaining agreements (CBAs) for 15 labor craft unions.” These CBAs, it said, “would govern construction activities on the project in the absence of a PLA.”<sup>1</sup>

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<sup>1</sup> “Project Labor Agreement Benefit Analysis, Olympic Regional Development Authority, Olympic Center Modernization, Lake Placid, New York” (January 2020),

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

In its "Olympic Center" report, Seeler finds that doing the work under a PLA "could result in a savings of \$652,900 or approximately 4.3 percent of the projected cost of the entire project."<sup>2</sup> Because this estimate relies on a false comparison of costs, with and without a PLA, it cannot be believed.

The report says that "that the use of a PLA does not prohibit or exclude non-union or out of state contractors from participating in and bidding on the Project."<sup>3</sup> This is correct. However, the very purpose of a PLA, from the viewpoint of the construction unions, is to discourage bids from non-union contractors. It is the decision *not* to use a PLA that would remove the obstacle to bids from non-union contractors that could do the work at lower cost than union contractors. A non-

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<https://beaconhill.org/BHISTudies/PLA2021/PLA-920/Olympic-Center-Final-Draft-Report-2020-01-06.pdf>;

<sup>2</sup> Ibid.

<sup>3</sup> Ibid, 18.

union contractor can succeed in winning a bid by taking advantage of not only the cost reductions that Seeler considers but also of cost reductions that Seeler doesn't consider.

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

Consider one such assumption: "Given the nature and size of this Project, as well as the make-up of the market, we project, in the absence of a PLA, on a dollar basis, the percent of successful unionized contractors and sub-contractors covered by one or more of the applicable CBAs to be approximately 70 percent." The implication is that the saving would be substantially greater if there were 100% union participation. In other words, the saving is greater the greater the union participation. But, of course, the saving could be greater still if bidding without the PLA led to 0% union participation and the performance of the project only by non-union contractors.

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

For example, a study conducted in 2007 at the University of Washington contradicts the findings used in the “Olympic Center” report.<sup>4</sup> The study showed that construction projects using multiple prime contracts saved 5% when compared with projects using a single prime contractor. The study attributed the savings to lower bid costs from multiple prime contractors.

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

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

The report further claims that “a PLA could provide additional flexibility in the regular work week by allowing a contractor to use a four 10-hour day schedule or a regular day without requiring permission or consent from the union or formal waiver from the Department of Labor.” According to the report, as a result,

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<sup>4</sup> Eddie M. Rojas, “Productivity Enhancement: Single vs. Separate Prime Contracting” (2007), *Journal of Construction Engineering and Management* 134 (10), 758-765.

<sup>5</sup> Paul G. Carr, “Bid Price and Level of Price White Paper”, (unpublished).

savings would be one hour per week per person. Again, the report provides no basis for this assumption aside from speculation . Nor does it explain why a PLA would provide for this flexibility when the absence of a PLA could do the same thing.

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

The report attributes a cost saving of \$51,300 to the use of apprentices by non-union contractors. While the report assumes non-union participation to be 30%, a PLA could in fact discourage non-union contractors to bid on the job. In this case, no savings would materialize. Conversely, if non-union participation were 100%, then, by the logic employed here, savings would be even greater.

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

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

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

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

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

Finally, the report estimates the largest labor cost savings to result from reclassifying work to building agreements only. The report goes on to state “previous PLAs in the region have not altered work classification as stated in the applicable CBAs and therefore would require negotiations with the Trades Council.” This stipulation is purely speculative and cannot be considered as a



matter-of-fact cost saving. Moreover, the alteration of work classifications could result in a violation of labor law.

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

A "modification" provided for by a PLA might well be of no value to the builder if the work rule forged by this modification would apply anyway, were a contractor that does not use union labor to get the work. The fatal flaw in the Seeler report therefore is that it compares two worlds, one of which is not germane to the question they are hired to answer. The first world – the one that is not germane – is one in which there are no PLAs, and the unions do the work but under existing CBAs. The second world is one in which the same unions do the work but, thanks to a PLA, do the work but under more efficient and cost-effective work rules than would apply without a PLA. In effect, Seeler is saying that, since the plan is to give the unions the work anyway, the builder might as well enter the PLA and enjoy such cost savings as the PLA makes possible. It is the PLA itself, however, that discourages non-union contractors from bidding. And it is the absence of a PLA that encourages non-union contractors to bid and to take advantage of their own cost-saving work rules.

## Experience with PLAs

The Beacon Hill Institute (BHI) has conducted six studies aimed at determining the effect of PLAs on school construction costs and final bids.<sup>6</sup> We examined school construction costs because schools are sufficiently uniform in design and construction to permit comparisons of projects built under a PLA with projects not built under a PLA. Every study found that the presence of a PLA increased final bids. This, we argue, is owed to the fact that non-union contractors are discouraged from bidding on PLA projects. They are discouraged from bidding, because they are required to hire workers through the union hiring hall and to provide those workers benefits when they already have a workforce of their own, for which they provide benefits. Seeler concludes that costs would be lower with a PLA than without a PLA only by ignoring the fact, documented in our studies, that PLAs drive up costs by discouraging bids from non-union contractors.

An example of how the Seeler illogic can end badly for taxpayers is a project, originally slated for construction under a PLA, which the builder put up for

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<sup>6</sup> See “The Effects of Project Labor Agreements on Public School Construction in Connecticut” (February 2020), <https://beaconhill.org/2020/02/11/the-effects-of-project-labor-agreements-on-public-school-construction-in-connecticut/>; “The Effects of Project Labor Agreements on Public School Construction in New Jersey (August 2019), <https://www.beaconhill.org/BHISTudies/PLA2019/BHI-PLA-NJ-Report-20190826FINAL.pdf>; “The Effects of Project Labor Agreements on Public School Construction in Ohio” (May 2017), <https://www.beaconhill.org/BHISTudies/PLA2017/OHIO-PLA-FINAL2017-0524.pdf>; “Project Labor Agreements and Public Construction Costs in New York State,” <https://www.beaconhill.org/BHISTudies/PLA2006/NYPLAReport0605.pdf>; “Project Labor Agreements and the Cost of Public School Construction in Connecticut” (November 2004), <https://www.beaconhill.org/BHISTudies/PLA2004/PLAinCT23Nov2004.pdf> and “Project Labor Agreements and the Cost of School Construction in Massachusetts” (September 2003), <https://www.beaconhill.org/BHISTudies/PLA2003/PLA92503.pdf> .

rebidding once it became clear that the PLA was making the project far more costly than necessary.

In 2009, the U.S. Department of Labor (DOL) mandated that the construction of a planned New Hampshire Job Core Center take place under a PLA. After a protest from a contractor over the PLA, the DOL hired Hill International, a firm that operates much like Seeler, to do a study of the PLA to determine whether it would save on costs. Following a methodology like Seeler's, Hill found that "a PLA will advance the Federal Government's interest in achieving economy and in the project through standardization of work rules; [and] a guaranteed no-strike, no lock-out, or work disruption provision."<sup>7</sup>

After further delay, the DOL issued another solicitation for bids, again mandating a PLA. This time, however, the U.S. General Accountability Office (GAO) advised the DOL to rebid the project without a PLA. When the DOL complied and received the new bids, the cost of the project fell by more than \$6 million.<sup>8</sup> We know this only because the belated intervention of the GAO forced the builder to ignore the Hill Study and to get bids without a PLA.

Instances like this are rare because it is usually impossible to test the accuracy of reports like those provided by Hill and Seeler. Their reports expect the reader to believe that the authors somehow know what the costs differences are, with and

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<sup>7</sup> David G. Tuerck and Paul Bachman, *Project Labor Agreements and Financing Public School Construction in Massachusetts*, December 2006, The Beacon Hill Institute, p. 19, <https://www.beaconhill.org/BHISTudies/PLA2006/BHIMASSPLAUpdate061204FINAL.pdf>.

<sup>8</sup> Associated Builders and Contractors, "Taxpayers Save More Than \$6 Million on DOL's New Hampshire Job Corps Center: ABC Contractor Awarded Contract without PLA" (April 24, 2013), <https://www.abc.org/News-Media/News-Releases/entryid/958/-taxpayers-save-more-than-6-million-on-dols-new-hampshire-job-corps-center-abc-contractor-awarded-contract-without-pla>.

without a PLA. The reader is to believe that the authors can divine the purported cost saving – and without allowing that the cost saving could be all the greater if there were no PLA in the first place.

There was an incident, however, in which the city of Ogdensburg, New York was urged to abandon a PLA endorsed by Seeler because the U.S. Department of Agriculture found that the PLA lacked “sufficient supporting documentation.”<sup>9</sup> The city was so committed to having a PLA, however, that it nevertheless took out a loan to replace financing that the USDA withdrew over the issue.

Another incident included a highway construction project to reconstruct Exit 122 on Route 17 in Orange County, New York, which was scheduled to begin in 2011. The project, however, required bidding with the use of a PLA, after the fact that several bids were already put forth on the project.<sup>10</sup> The New York Department of Transportation (NYDOT) awarded the work to a union labor firm despite an award that came in \$4.5 million lower than the accepted bid.<sup>11</sup> A judge ruled that the NYDOT had wrongly awarded the contract, leading to over a year in delays and costing taxpayers \$22 million.<sup>12</sup>

Again, the NYDOT required bidding under a PLA for 3.1 miles of sidewalks and trails as part of the Empire State Trail in Syracuse, New York.<sup>13</sup> Originally, the

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<sup>9</sup> Tom Graser, "USDA: Documentation does not support PLA savings," Watertown Daily Times, (August 3, 2019), [https://www.nny360.com/communitynews/business/usda-documentation-does-not-support-pla-savings/article\\_38ddf084-7041-5dbc-bd47-bccaf9f13270.html](https://www.nny360.com/communitynews/business/usda-documentation-does-not-support-pla-savings/article_38ddf084-7041-5dbc-bd47-bccaf9f13270.html).

<sup>10</sup> Ken Girardin, Empire Center, "Highway project highlights waste", (December 14, 2015), <https://www.empirecenter.org/publications/more-taxdollars-head-for-the-exit/>

<sup>11</sup> Ibid, 9.

<sup>12</sup> Ibid.

<sup>13</sup> Ken Girardin, Empire Center, "Labor giveaway hits the trail," (January 10, 2020), <https://www.empirecenter.org/publications/labor-giveaway-hits-the-trail/>

NYDOT requested bids on a project with similar specifications, garnering five bids, which it ultimately rejected.<sup>14</sup> Later, the NYDOT rebid the project under a PLA. In the end, the NYDOT awarded the project to a union firm whose bid was \$1.7 million higher than the lowest bid (which came from a non-union firm).<sup>15</sup>

In 2006, the city of Fall River, Massachusetts saved \$5.8 million by removing a PLA from a request for bids on three local school building projects. There have been instances, too, when courts blocked attempts to use a PLA on the ground that the PLA was anticompetitive.<sup>16</sup>

### Other Issues

Cost is not the only issue taken up by PLA advocates. The construction unions claim that PLAs avoid delays, and cost overruns and maintain labor “peace.” The Seeler reports consider the argument that PLAs help assure labor peace, presumably by deterring disgruntled union workers from disrupting a project if it goes to non-union workers. It is, of course, the duty of the builder to decide whether it wants to give in to this kind intimidation. A study of federal construction projects under the George W. Bush administration showed that the absence of a PLA did nothing to cause delays or cost overruns.<sup>17</sup>

A related argument is that PLAs protect against strikes. But because non-union workers, not having a union to represent them, find it difficult to go on strike, this

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<sup>14</sup> Ibid, 12.

<sup>15</sup> Ibid.

<sup>16</sup> Tuerck and Bachman, “Massachusetts”, p 9.

<sup>17</sup> See David. G Tuerck, Sarah Glassman, and Paul Bachman, *Project Labor Agreements on Federal Constuction Projects*, 2009, Beacon Hill Institute. See <https://www.beaconhill.org/BHISTudies/PLA2009/PLAFinal090923.pdf>.

argument has little substance. Anyway, strikes are, for the most part, a thing of the past. In 1952, there was a record number of strikes in the United States – 470 in all, each involving at least a thousand workers. In 2017, the latest year for which data are available, the number was seven – the lowest on record.<sup>18</sup>

The fervor with which the construction unions advocate for PLAs stems in part from their declining membership. In 1983, 48.1% of private construction workers in New York belonged to unions. By 2020, the fraction had fallen to 24.4%.<sup>19</sup> This represents a continuation of a decline that set in after World War II, with the move of housing to the suburbs and the introduction of new technologies that rendered the existing construction skills obsolete. PLAs represent efforts to protect the construction trades in the face of their declining relevance. No piling on of irrelevant statistics is going to change this trend.

### Conclusion

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

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<sup>18</sup> U.S. Bureau of Labor Statistics, “Work stoppages involving 1,000 or more workers, 1947-2017” <https://www.bls.gov/news.release/wkstp.t01.htm>.

<sup>19</sup> Barry Hirsch and David Macpherson, “Union Membership, Coverage, and Earnings from the Current Population Survey,” <https://www.unionstats.com/>. Accessed October 7, 2021.

vary inversely with the number of bidders, a builder should welcome bids from both union and non-union contractors.

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



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