

**Testimony of Thomas T. Rolleri, Jr.
of
Granite Construction Company
on Behalf of**

The Associated General Contractors of America, Inc.

**Presented to the
U.S. Senate Committee on Health, Education and Pensions
Subcommittee on Employment, Safety and Training**

Field Hearing Entitled

“The Use of Project Labor Agreements Examined”

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The Associated General Contractors of America, Inc. (AGC) is a national trade association of more than 33,000 firms, including over 7,300 of America's leading general contracting firms. They are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, water works facilities, multi-family housing projects and site preparation and utilities installation for housing development.

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SUMMARY OF AGC'S STATEMENT ON PROJECT LABOR AGREEMENTS IN PUBLIC CONSTRUCTION

The Associated General Contractors of America, Inc. (AGC) has long opposed government mandated labor agreements (GMLAs). As the largest and most diverse trade association in the construction industry, representing both open shop and union contractors, AGC maintains that publicly financed projects should be open to competition among all qualified firms, without regard to labor policy. In 1992, when the Bush Administration issued an executive order excluding many union contractors from federal work, because those firms had agreed to limit their subcontracting to other union firms, AGC took the same position and opposed that order.

To the surprise of many outside the construction industry, AGC has found that government mandated labor agreements are detrimental to both open shop and union firms. GMLAs effectively prevent open shop contractors from bidding competitively on these projects. For union contractors, GMLAs substitute the government for the contractor in the collective bargaining process. By negotiating with the government, the building trade unions are able to take advantage of the lack of expertise the government has in labor/management negotiations and remove the free market economic forces that underlie the collective bargaining process.

The problems open shop contractors face with government mandated labor agreements include:

- The inability to use their own employees: GMLAs limit the employment of open shop contractor employees on GMLA projects.
- Disregard for competitive bidding procedures: GMLAs inject political considerations into what would otherwise be fair and open competition.

For union contractors, the problems caused by government mandated labor agreements include:

- The removal of the contractor from the collective bargaining process: GMLAs take control of the collective bargaining process away from contractors and give it, instead, to the government contracting agency or its agent.
- Agreements that favor union interests: Since the government is not experienced in construction labor/management relations, GMLAs typically favor unions.
- Disrupting local labor conditions: GMLAs typically include terms and conditions that the local building trade unions cannot obtain, or have lost, through the normal collective bargaining process. This sets patterns and establishes precedents for the industry that are then cycled back into the private market.

Thomas T. Rolleri, Jr., Labor Relations Manager for Granite Construction Company of Watsonville, California, is presenting AGC's statement to the Senate Subcommittee on Employment, Safety and Training.

AGC represents both union and open shop construction firms in 102 chapters in all 50 states and Puerto Rico. Its 33,000 member firms perform building, heavy, highway, municipal-utility and industrial process construction projects.

**STATEMENT FOR THE RECORD FROM THE ASSOCIATED
GENERAL CONTRACTORS OF AMERICA
PRESENTED BY TOM ROLLERI**

Good morning, Chairman Hutchinson. I want to thank you and the Subcommittee for the opportunity to testify today.

My name is Tom Rolleri. I am the labor relations manager for Granite Construction Company in Watsonville, California. Granite Construction is a member of the Associated General Contractors of America (AGC). AGC is the largest trade association in the construction industry, representing more than 33,000 firms, including 7,300 of America's leading general contracting firms. They are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects and site preparation and utilities installation for housing developments. I am testifying today on behalf of AGC.

I. What Are Government Mandated Labor Agreements?

Government mandated labor agreements (GMLAs) come in a wide variety of shapes and sizes. By definition GMLAs involve a public entity, such as the federal, state or local government. A GMLA can also involve local agencies, boards, commissions, development authorities, public hospitals and toll road authorities. The line between a private project labor agreement and a government mandated labor agreement can be difficult to draw and may require a careful analysis of the structure of the contracting entity and its relationship with the governing entity.

The terms of a GMLA can range from a single sheet of paper to a lengthy and complex document. A public owner GMLA typically requires jobsite contractors and subcontractors to use building and construction trade union hiring halls to obtain craft employees for the project. In exchange for using only union labor on the project, the union will agree to a "no-strike" clause for the duration of the project (such clauses are usually a part of local collective bargaining agreements). In addition to these two basic features, a GMLA may include some or all of the following:

- Mandatory recognition of the signatory unions as the sole and exclusive bargaining agents for all construction employees.

- Mandatory union membership and dues payments in non right-to-work states, and mandatory agency fee payments in right-to-work states.
- Mandatory payments into union fringe benefit funds for all employees.
- Restrictive subcontracting provisions requiring all subcontractors at every tier to execute the GMLA.
- Mandatory grievance and jurisdictional dispute resolution procedures.
- Uniform hours of work, holidays and work rules.
- Union stewards for all crafts.
- Derivative liability for subcontractor wage and fringe benefit delinquencies.

Government mandated labor agreements are negotiated either by the public entity or its agent, who usually has no interest in actually building the project, directly with the local unions or the local AFL-CIO Building and Construction Trades Council. Typically, there is no contractor involvement in the negotiations. Once negotiated, the GMLA is incorporated into the project specifications and becomes binding on all successful bidders.

II. Why AGC Opposes Government Mandated Labor Agreements

It is AGC's long-standing policy to oppose government mandated labor agreements. Instead, AGC supports the well-established principle of open competition among all qualified firms for taxpayer-financed construction opportunity, regardless of the contractor's labor policy.

The problems open shop contractors face with GMLAs include:

- The inability to use their own employees: GMLAs sharply restrict open shop contractors from using their own employees on the project.
- Disregard for competitive bidding procedures: GMLAs inject political considerations into what would otherwise be fair and open competition. These agreements run counter to the Competition in Contracting Act and the Federal Acquisition Regulations that require federal agencies engaged in "procurement for property or services to obtain full and open competition." Many states, counties and municipalities have similar laws and regulations.

For union contractors, the problems caused by GMLAs include:

- Removal of the contractor from the collective bargaining process: GMLAs take control of the collective bargaining process away from contractors and give it instead to the government or its agents. The government rarely has the experience or expertise to negotiate with union officials.

- Agreements that favor union interests: Since the government is not experienced in construction labor/management relations, GMLAs typically favor unions.
- Disrupting local labor conditions: GMLAs typically include terms and conditions that the local building trade unions cannot obtain through the normal collective bargaining process. GMLAs create this situation by removing the market factors that drive labor/management relations.

Other problems associated with government mandated labor agreements include:

- Increased costs of public construction projects: GMLAs discourage many companies from bidding on a project, and impose extra costs on those who do. AGC is not aware of any research documenting that GMLAs save money or achieve any other type of efficiency.
- Conflicts with other federal laws: GMLAs on federal construction may conflict with other federal laws, such as the Employee Retirement Income Security Act (ERISA), the National Labor Relations Act and the Davis-Bacon Act.
- Union jurisdictional disputes are more common and can add to project costs.
- Government interference in the collective bargaining relationships and labor relations policies of private employers.

III. How Government Mandated Labor Agreements Hurt Open Shop Contractors

Although GMLAs do not expressly exclude open shop contractors, they prevent open shop contractors from bidding competitively for the work that they cover.

The payment of union wages and benefits does not prevent open shop contractors from participating on GMLA projects. Most public projects are subject to state and local prevailing wage laws, and federal contractors must comply with the requirements of the Davis-Bacon Act. The problem open shop contractors face when bidding on GMLA projects is that they cannot use their own employees on the project. Instead, they must hire the majority of trade workers through union hiring halls. However, open shop contractors already have their own employees and management practices that are usually different from the union practices. It is not cost-effective for an open shop company to hire a new workforce and develop an entirely new set of work rules and employment practices, while maintaining its current workforce.

Thus, it is true but irrelevant that open shop firms are free to work under a GMLA. What matters is that a GMLA requires open shop contractors to so fundamentally change the way they do business that few such firms can competitively bid for the work.

Government mandated labor agreements go a long way toward realizing two goals of the building trade unions. First, they take a major step towards eliminating open shop employee competition with the unions. For example, if an open shop contractor decided to bid on a GMLA

project, the employees of the contractor could, conceivably, work on the project. The employees of the open shop contractor, however, would be at the bottom of the union's referral list. They would be the last workers referred to the job, if they were referred at all. The end result of a GMLA is to restrict the opportunity for open shop employees to work on taxpayer-funded projects.

In addition, GMLAs seek to achieve a second and more important goal for the building trade unions – increase the number of union members. Since 1973, the percentage of construction industry employees that belong to one of the building trade unions has declined from 40% to less than 20%. Moreover, union contractors have been losing market share to their open shop competitors. By greatly increasing the use of government mandated labor agreements, which generally have the effect of requiring union membership as a condition of employment on a project, they increase union membership from the top down, without regard to the workers' support for union representation. It is the ultimate organizing tool. The government mandates membership and dues payments for you. There is no need to bargain with employers over recognition or convince employees of the merits of union membership.

IV. How Government Mandated Labor Agreements Hurt Union Contractors

Because of their mandatory character and the inexperience of those often negotiating their terms, GMLAs on publicly funded construction can impact local collective bargaining. GMLAs frequently set patterns and establish precedents for the industry that do not exist in the private market. Unions can be put in a position to insist that contractors accept the terms and conditions of GMLAs for private work. Contractors will find it difficult to refuse these demands when a substantial portion of the union work force is employed on construction subject to GMLAs. In this type of market, there are few disadvantages to unions of a strike directed at work not subject to a GMLA, since GMLA work can continue to employ the bulk of the union work force. In areas where these projects constitute a significant volume of the work, government mandates for these agreements will seriously compromise local employers in the negotiation of local area labor agreements.

By eliminating the contractor from the collective bargaining process, the direct face-to-face negotiations that lie at the heart of collective bargaining are undermined. In fact, government mandated labor agreements are directly contrary to the collective bargaining process that the National Labor Relations Act was created to encourage and regulate. These agreements replace the free market as the mechanism for determining wages and benefits, by allowing parties who have little incentive to seek cost-effective agreements, or protect the interests of nonunion members, to negotiate wages, benefits and other conditions of employment.

V. Government Mandated Labor Agreements May Violate Several Federal Laws

Government mandated labor agreements may run counter to several federal laws. The various laws GMLAs could violate include:

The Employee Retirement Income Security Act (ERISA)

The Employee Retirement Income Security Act (ERISA) preempts any and all state laws, which relate to employee benefit plans. Most GMLAs require contractors to contribute to specific building trade fringe benefit plans. These mandatory contributions may violate ERISA if the mandate to make the contributions is a requirement having the effect of a state law or regulation. In addition, GMLAs that mandate participation in apprenticeship programs could be in violation of ERISA.

The National Labor Relations Act (NLRA)

Whether government mandated labor agreements violate the National Labor Relations Act (NLRA) focuses on whether the interests of the government are proprietary or regulatory. If the interests of the government are proprietary, meaning that the government is acting to protect its interests as a property owner, then the use of a GMLA may not violate the NLRA. This was the essence of the *Boston Harbor* case decided by the U.S. Supreme Court in 1993. If, on the other hand, the actions of the government are *regulatory* in nature, the NLRA may preempt. A federal court decision in *Alameda Newspapers, Inc. v. City of Oakland*, 146 LRRM 3103 (N.D. Cal. 1994) was decided along this line of reasoning, consistent with the *Boston Harbor* decision.

The Davis-Bacon Act

Almost all federal and federally funded construction is subject to the Davis-Bacon Act, which requires all contractors and subcontractors performing work on a federal project to pay prevailing wages and benefits as determined by the Department of Labor. The wage determinations issued by the Department usually cover one or more counties.

In determining prevailing wages and benefits, the Department of Labor identifies the source of those wages and benefits as those paid by either union contractors or open shop contractors, then includes them in the wage determinations it issues. In the case of wages and benefits that originate from union contractors, the Department also identifies the local union contract they came from. Not only must contractors and subcontractors performing work on the project pay these rates; they must also comply with the labor and jurisdictional practices of that local union.

If a government agency negotiates a project labor agreement in an area where the Labor Department has determined that union rates and practices prevail, and the Davis-Bacon Act applies to the project because it is federally funded, is it free to negotiate different rates and practices than those mandated by the Department under the Davis-Bacon Act? Must the agency negotiate with the same unions identified by the Department as the source of the prevailing rates and practices in that area, or can it negotiate with others for a better deal?

If the Labor Department has identified the area as one where open shop wages, benefits and labor practice prevail, can a government agency negotiate with unions and/or union contractors to impose nonprevailing rates and practices on the project? Can the agency negotiate with the open shop contractors in the area for a project labor agreement? If an agency is a party to a project labor agreement that is inconsistent with the practices required by the Labor Department under the Davis-Bacon Act, would the agency share liability for violations?

If a government cannot supersede the Davis-Bacon Act with a mandated labor agreement, what is the purpose of such a mandate on a federally funded project? What terms and conditions can be negotiated? If the government is no longer required to respect local wages, benefits and labor practices on these projects, what's the point of the Davis-Bacon Act, or its state and local counterparts?

Many of these outstanding questions raise issues regarding the true objective of GMLAs. If the objective is to simply parallel the prevailing wage laws and create a "level playing field," GMLAs serve no purpose. However, if they are intended to go beyond this, then their proponents cannot argue that competition for publicly funded construction projects will be unaffected by GMLAs. Nor can they maintain that the choices about union representation of employees who could work or do work on these projects are truly free, as contemplated by the law.

VI. A Dangerous Precedent

Inevitably, government mandated labor agreements increase the cost of all construction, including the private work that manufacturers and other American businesses find necessary to maintain their competitive edge in a world economy. These mandates also set an extremely dangerous precedent for manufacturing and other industries. They raise ominous questions about the government's role anywhere in the private sector. Having set the precedent, will the government presume to negotiate collective bargaining agreements for the aerospace and automobile industries? At what point will the government dictate the terms of a collective bargaining agreement between Intel and its employees?

VII. Conclusion

Many contractors have long used voluntarily negotiated, competitive, project labor agreements on both private and public construction projects. For the reasons already noted, government mandates for these agreements on taxpayer financed construction have a negative impact on the entire construction industry, including the substantial segment that continues to work under collective bargaining agreements. This is an area that neither needs nor warrants government interference or mandates.