

**Summary and Analysis of
Santa Clara & San Benito Counties Building & Construction
Trades Council
Proposed Project Labor Agreement to
San Jose Unified School District
and
Related Issues**

**San Jose Unified School District
November 4, 2003**

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I. INTRODUCTION / BACKGROUND INFORMATION

It is a requirement of state law, regardless of union membership or whether a project labor agreement (“PLA”) is implemented, that all contractors on all public works projects pay each worker the prevailing wage for the classification of the work being done by that worker. All District projects are public works projects. Aside from withholding taxes, social security, etc., the contractor must certify on its payroll records that it has either (1) paid the worker the entire prevailing wage or (2) paid any amount not paid to the worker on behalf of the worker into health plans, defined benefit plans, defined pension plans, apprenticeship plans, etc.

On March 27, 2003, the District’s Board directed staff to investigate the possibility of the District entering into PLA. A PLA is an agreement proposed by trade unions, between the trade unions, a project owner, and all contractors on the project owner’s projects. PLAs generally require that all employees of all contractors on the owner’s projects register with the appropriate trade union, be hired out through that union hall referral system, contribute to all of that trade union’s health, fringe, pension, apprenticeship, and other benefit plans, and pay that trade union’s representation fee. These requirements are for workers who are union members and workers who decide not to join that trade union. Under a PLA, the unions become the sole representative of the workers on the projects. Unions typically negotiate away their rights to strike, picket, or engage in other organizing activities in favor of a PLA and workers are to continue working on the projects regardless of labor unrest or general strikes elsewhere in the region. In one of the important California legal decisions regarding PLAs, the California Supreme Court defined PLAs as follows:

The [PLA] is an example of a type of prehire agreement designed for large and complex construction projects. It is designed to eliminate potential delays resulting from labor strife, to ensure a steady supply of skilled labor on the project, and to provide a contractually binding means of resolving worker grievances. Such agreements . . . have long been used in large construction projects undertaken by both private concerns and . . . public agencies.

Associated Builders and Contractors, Inc. v. San Francisco Airports Commission (1999), 21 Cal. 4th 352, 359.

District staff has investigated the issues related to requiring a PLA on District projects and has met with representatives of the Santa Clara & San Benito Counties Building & Construction Trades Council (“Trades Council”), the trade union group requesting that the District implement a PLA on District projects. Miller Brown & Dannis (“MBD”) provided to the

District's Board a copy of MBD's August 12, 2003, memorandum to Jerry Matranga that summarized some of the key points of District staff's first meeting with the Trades Council representatives. Another copy of that August 12, 2003, memorandum is attached hereto as **Exhibit "A."** The District provided the Trades Council representatives with a copy of this memorandum and they took issue with some of the recollections and statements made in that memorandum, including:

- A. The District's understanding regarding "Agency Fees" may not have been consistent with the Trades Council's use of that term. The Trades Council representatives explained that most of the fees, some of which may be "initiation fees," are generally paid by the employee, that most employers do not pay these fees, and that many of the unions waive these fees, especially for new members. As indicated below, the Trades Council did not provide any information about the amount of these fees.
- B. The Trades Council took issue with the statement indicating that non-union contractors may have to maintain pre-existing benefit plans while contributing to union plans and that these benefits may be redundant. They indicated that most non-union contractors do not carry full benefit packages, or at least none comparable to the union plans, and that the employees could opt out of pre-existing plans. The Trades Council did not provide any information supporting these contentions.

Over the past few months and at the direction of the District's Board, District staff has, among other activities indicated in this analysis,

- A. Met and discussed PLAs with representatives of the District's current program managers and the District's construction management ("CM") firms;
- B. Met and received comments from the non-union organization, Associated Builders and Contractors ("ABC") about PLAs;
- C. Toured the apprenticeship program facilities of the International Brotherhood of Electrical Workers ("IBEW") Union Local 332 and Plumbers, Steamfitters & Refrigeration Fitters Local Union 393 ("Plumbers");
- D. Toured the apprenticeship program facilities of the ABC in Hayward;
- E. Met with and discussed the PLA with the Associated General Contractors of America ("AGC"), who offered to represent the District, for a fee, to negotiate a PLA, and
- F. Sent and received back a written survey of contractors who have bid on District projects to gain a better understanding of how the District's construction contracting community would view a PLA.

II. EXECUTIVE SUMMARY

Because this analysis is not meant to come to a specific conclusion or make a specific recommendation, this executive summary is a brief itemized statement of the major points of this analysis.

After extensive investigation, research, and inquiry into PLAs, the following key points appear important for the District to consider when determining whether to require a PLA on District projects and, if so, the terms of a PLA. The information that follows this executive summary and the documents attached provide greater detail to the points stated below.

- A. PLAs are still very controversial. Proponents and opponents do not agree on the benefits or drawbacks of entering into a PLA.
- B. All District contractors must pay the prevailing wage to all workers on District projects. A contractor attempting to violate this requirement might find it more difficult if a PLA were in place, but the District has no evidence that its contractors violate this requirement except for a few, rare instances.
- C. A pre-apprenticeship program is a feature of the PLA, but District's Directors of Instruction are unsure whether the Trade Council's proposed program would justify a PLA. The non-union apprenticeship program may be willing to accept apprentices without a PLA.
- D. Non-union contractor employees would have to go through the union hall referral system, pay initiation fees, and pay all benefit payments to union fringe benefit programs, regardless of their current coverage. This would reduce competition of non-union contractors who may have to maintain current coverages as well. Also, non-vested contributions would be subject to forfeit.
- E. Only a contractor's "core" employees would necessarily be dispatched to that contractor.
- F. District staff is concerned that small, local contractors that were crucial to the success of the Measure C program, would not bid on District projects; this belief is supported by the results of the District's survey of its bidders.
- G. The District's CMs generally agree that PLAs are appropriate on large, complex projects, many times larger than any project the District has planned.

III. ANALYSIS

Below are items related to either (1) specific issues and an analysis of that issue or (2) an entity and an analysis and summary of that entity's position related to PLAs.

- A. Trades Council's Proposed PLA

The Trades Council submitted to District staff a proposed form of PLA. This form was a copy of the PLA as approved by East Side Union High School District's ("East Side") Board in August, 2003.

District staff and legal counsel "red-lined" that PLA with suggested changes that they believed would make the PLA more palatable to contractors who may be opposed to working under a PLA and, thereby, promoting competition and continued participation in the District's projects. The Trades Council provided their comments to District staff's suggested changes. Attached hereto as **Exhibit "B"** is the proposed PLA with District staff's suggested additions shown in underline, deletions shown in ~~strike-out~~, and the Trades Council's responses shown in [ALL CAPITAL AND IN ARIAL 10 POINT FONT]. Also Attached hereto as **Exhibit "C"** is a copy of the Trades Council's September 29, 2003, letter to Jerry Matranga in response to the District's suggested changes.

It is clear, although unstated in the PLA or by the Trades Council representatives, that the Trades Council is using the PLA as an organizing tool. Because all workers must register through the appropriate trade before working on District projects, the union hopes to attract these workers to join the appropriate union.

B. Specific Issues / Items in the PLA

Below are the issues that District staff believes are important related to the PLA and which District staff have investigated and discussed with the Trades Council. Some of these issues were initially discussed in Miller Brown & Dannis' August 12, 2003, memorandum attached hereto as **Exhibit "A,"** but are further discussed below.

1. Payment of Prevailing Wages and Indicated Benefits

The Trades Council believes that non-union contractors are able to under bid construction projects by not paying their workers the prevailing wage or not actually providing the benefits indicated on those contractors' certified payroll records. The Trades Council states that under a PLA it can monitor the prevailing wage payments and the benefit plan contributions because the contributions, at least, will be going into the unions' plans.

The Trades Council provided anecdotal evidence of non-union contractors violating prevailing wage laws. This evidence is in the form of "war" stories from union representatives.

2. Apprentices

State law requires that contractors use apprentices, if available, on public works projects at a prescribed ratio to journeymen. All apprentices must work for a state-approved apprenticeship program. The PLA adds additional requirements that the apprenticeship programs also have "graduated apprentices annually for at least the past 5 years" for an "apprenticeable occupation for more than 9 years."

The ABC states that this additional requirement is intended to exclude apprentices from state-approved programs that ABC operates.

3. Pre-Apprenticeship Program

The pre-apprenticeship program that the Trades Council is offering with their PLA is the same as the program that is just beginning at East Side. It is unclear (1) how many students would benefit from such a program, (2) why interested students could not enter into a trade union's apprenticeship program on their own, or (3) why the Trades Council is opposed to implementing a pre-apprenticeship program that is not part of a PLA.

There is further discussion below about the pre-apprenticeship programs for District students, including non-union apprenticeship options.

4. Fees Paid by All Contractors' Employees

The PLA requires that even though contractors' workers can decide individually whether or not to join the applicable union, every contractor's workers must comply with the "union security provision of the applicable [collective bargaining agreement]." This means that either the contractor/employer must "deduct initiation fees, union dues or representation fees from the pay of any employee who executes a voluntary authorization for such deductions and [] remit the dues and fees to the applicable Union or Council," or the worker pays these fees when it begins a District project.

The Trades Council representatives indicated that some trades may waive the payment of these fees. Although District staff repeatedly asked for the amount of these fees, the Trades Council representatives did not provide any fee amounts or even a range of what these fees are or would be. They did point out that these fees benefit the employees in that the fees help support and fund the particular union's representation efforts.

5. Core Workers

The PLA requires that the "Union(s) shall be the primary source of all craft labor employed on the Project." Contractors can continue to employ their "core" workforce, although these core employees must still go through the union hall referral system. The PLA states that "core" employees must satisfy the following criteria:

- (i) Have worked at least 5,000 hours in the appropriate craft,
- (ii) Have been on the contractor's payroll at least 90 out the past 120 days, and
- (iii) "Have the ability to perform safely the basic functions of the applicable trade."

District representatives asked how this last item would be determined because it appeared to be very discretionary. The Trades Council representatives indicated that different types of evaluations could be done including, for example, a standard IBEW safety test for electrical workers. The Trades Council did not provide any objective criteria in the PLA to evaluate whether a worker had the “ability to perform safely.”

In reviewing the criteria for “core” employees in the San Jose Civic Center PLA, “core” workers under that PLA did not need to meet these three requirements, but only needed to meet one requirement: they need only be on the contractor’s payroll at least 90 out the past 120 days to be a “core” employee.

6. Payment into Benefit Funds

Section 9.2 of the PLA requires all contractors to contribute to the “vacation, pension or other form of deferred compensation plan, apprenticeship, and health benefits funds” that are indicated in the applicable trade union agreement at the level indicated in those agreements. When asked, the Trades Council representatives stated that this meant, for example, a non-union contractor who pays into another health plan, defined contribution plan (e.g., 401k), or other plan, must now pay into the union-designated plan. If a contractor had to maintain its pre-existing benefits plans, then that contractor would have to pay twice for benefits and these benefits may well be redundant.

This particular issue is key to many non-union contractors objecting to a PLA. Over and above the philosophical issues that some contractors may have with being a signatory to a union and having their employees represented by a trade union, open shop contractors argue that they can no longer bid competitively if they have to maintain their existing benefit plan(s) while paying into the union’s plans and still paying the prevailing wage. The Trades Council representatives believe that many non-union contractors are not providing benefits to their workers and that the information on non-union contractors’ certified payroll records are often incorrect or falsified, especially in the benefits area.

Many of the District’s projects last only three (3) months. Most contractors are not on site every day of a project, and individual workers are usually on site even less. It would likely be necessary for non-union contractors to maintain benefits programs for hours worked on District projects and hours work on all other projects. This duplicative continuance of benefits programs would have a detrimental financial impact on any non-union contractor who maintains an existing benefits program.

7. Minority and Women Representation in Union

District staff asked the Trades Council to provide ethnicity data for all of its members. In response to the District’s inquiry, the Trades Council provided ethnicity information from eight of the 23 represented trade unions. Attached hereto as **Exhibit “D”** is a copy of the chart that the Trades Council provided to District staff. Based on this chart, fifty-seven percent (57%) of those eight trades are Hispanic males, thirty-seven percent (37%) are white males, one percent (1%)

are black males, one and a half percent (1.5%) are Asian/Pacific Island males, and less than three percent (2.8%) are women.

8. Small or Local Contractor Representation in Union

In addition to the above inquiry regarding ethnicity and gender make up of its union members, the District asked for information regarding the numbers of small and/or local contractors who are signatories to the applicable union. District staff has not received any information in response to this inquiry.

C. District Survey Results

The District's construction department with the assistance of each of its CM firms, solicited information from the bidders on District projects over the past few years. A copy of that form of survey is attached hereto as **Exhibit "E,"** including the number of responses for each question.

Ninety (90) contractors sent back completed surveys to the District. Generally, one quarter (1/4) to one third (1/3) of the contractors indicated they would be "less likely" to bid if specific provisions of a PLA were part of a District project; this also means that three quarters (3/4) to two thirds (2/3) of the contractors indicated they would be "more likely" to bid or would bid "the same" if a PLA were in place. Since the District sent this survey to contractors who have already bid on District projects, the number of bidders that are "less likely" to bid may be a more significant fact. But the survey results also indicate that it is possible that some contractors may bid on more District projects that have a PLA in place (i.e., the bidders who were "more likely" to bid).

Question 8 of the survey asked if a contractor would stop bidding on a District project if a PLA, regardless of content, were in place. Twenty-seven (27), or thirty percent (30%), stated that they would stop bidding.

With their survey results, some contractors submitted to the District additional comments regarding PLAs. A representative sample of these letters is attached hereto as **Exhibit "F."**

D. District's CMs' Comments Regarding PLAs

District staff met with representatives from the District's program managers and the District's CMs for their position related to PLAs. These firms are both union and non-union. Generally, the firms indicated the benefit of a PLA on projects substantially larger than any of the projects that the District will be awarding. There was also a consensus among the CMs that some specific types of projects should not be performed with a PLA, including smaller contracts related to deferred maintenance type work, including roof repair, window upgrades, some landscaping work, and paving projects.

E. ABC's and Non-Union Shops' Contentions Regarding PLAs

Some of the information from opponents to PLAs was indicated above. Generally speaking, a major sticking point for non-union contractors appears to be the payment of benefits into the union's fringe benefit plans and apprenticeship program. This is because (1) these plans only benefit union workers and (2) non-union contractors state they would still have to maintain their existing plans and, therefore, pay twice for benefits.

Another major sticking point for non-union contractors is that only the contractors "core" employees would be guaranteed the ability to work for the contractor on the project. All other employees that do not satisfy the requirements of "core" employees under the PLA would have to register with the appropriate trade union, but could be dispatched to other projects for other contractors or deemed unfit to dispatch by the union.

As stated above, ABC is a non-union / open shop organization that opposes PLAs. Attached hereto as **Exhibit "G"** is an August 18, 2003, ABC analysis of the Trades Council's PLA, which states the same opposition information provided herein.

F. Other PLAs

Other school districts in the Bay Area have implemented PLAs, including East Side and Vallejo City Unified School District. It is clear that many if not most PLAs are implemented in areas and districts that are characterized as "blue collar" and have a strong union presence in their citizenry that is often reflected on the boards of those Districts. District staff and legal counsel have inquired about the status of these PLAs and have received the following information.

1. East Side

The PLA at East Side has been in place for less than two (2) months. That district does not yet have any information regarding this PLA and its impacts

2. Vallejo City Unified School District

The PLA at this district is relatively seamless and district staff do not actively monitor or evaluate the impacts of the PLA. To the extent we could determine, no one has analyzed how the PLA at this District has impacted either the number of bidders, the quality of work, the bid prices, or the safety records of projects.

G. Articles Supporting PLAs

1. UCLA Study

In October, 2001, the Institute for Labor and Employment at the University of California, Los Angeles, published an article entitled, "Project Labor Agreements: An Exploratory Study." A copy of this study is attached hereto as **Exhibit "H."**

This report analyzed three PLAs by interviewing the project managers for three extremely large projects. The projects were: (1) the construction of a private power plant project near Fellows, California; (2) the construction of a private power plant project near Yuba City, California; and (3) the construction of a \$2 billion public works water storage project near Hemet, California. Based on these interviews, the writers concluded that the information from these project managers “tends to support the arguments advanced by PLA proponents” including that PLAs “facilitated labor peace, fostered workplace cooperation, and insured an adequate supply of skilled labor.”

Although supportive of PLAs generally, the authors also state that, “further research is necessary to more systematically adjudicate the competing claims of proponents and opponents. In particular, future research should consider the use of controlled case comparison and statistical methods.” (Exhibit “H,” pg. 15)

H. Articles NOT Supporting PLAs

1. ABC of Washington’s White Paper by Kathleen Garrity

The ABC provided the District with information retrieved from the internet and drafted in or around 2002 by Kathleen Garrity, Executive Direct of the ABC of Western Washington. This information is a white paper set up as “Thirteen Myths & Facts About PLAs: “Why Project Labor Agreements are Bad Public Policy.” As one would expect, the information in this paper is very critical of PLAs and makes many of the same arguments about PLAs that non-union contractors are making to the District. A copy of this white paper is attached hereto as **Exhibit “I.”**

2. AGC Rea & Parker Analysis of San Diego Water PLA

In March, 2003, the Associated General Contractors of America (“AGC”), San Diego Chapter, published an article entitled, “A Critical Analysis of the Fiscal Impacts of the San Diego County Water Authority Emergency Storage Project, Project Labor Agreement,” which was prepared by Rea & Parker Research and presented to the San Diego County Taxpayers Association. This report analyzed the PLA that was implemented on a 1999 \$700 million dam construction project, with appurtenant construction involved. A copy of this report is attached hereto as **Exhibit “J.”**

The AGC represents both union and non-union shops. This report purports to be an objective analysis and generally is able to maintain objectivity. It concludes that because PLAs have been found to be legal by courts, then the question for public agencies is whether it is “beneficial to its taxpayers constituency.” After reviewing both the proponents arguments and opponents’ arguments, the drafters conclude that,

- (i) There is no reliable evidence whether union construction is of higher quality than non-union construction;

- (ii) “Ethnic and gender minority contractors are disproportionately non-union” in San Diego County; and
- (iii) The proponent’s alleged \$7.2 million savings under the PLA was an “unwarranted assumption” based on an obvious miscalculation of the costs and savings associated with the use of apprentices.

This report also cited to a New York study of the Roswell Park Cancer Institute where a PLA was implemented on approximately 50 percent of the work on the Roswell Park Projects. Bid packages without a PLA generated 21 percent more bidders and were 13 percent under budget. Bid packages with a PLA were 10 percent over budget.

3. Beacon Hill Institute Study on Effects of PLA in Massachusetts

ABC provided the District with a copy of a January 2003 study by the conservative Beacon Hill Institute at Suffolk University entitled, “The Effects of Project Labor Agreements in Massachusetts.” This study scientifically analyzed 52 school construction projects in Massachusetts between 1995 through 2003 and found that “PLA projects, on average, cost \$39.00 more per square foot (in 2001 prices) than non-PLA projects.” The study found that this was a price differential of 17.3 percent. A copy of this report is attached hereto as **Exhibit “K.”**

I. Trade Council’s Apprenticeship Programs and Pre-Apprenticeship Proposal

On October 8, 2003, District staff and legal counsel toured the apprenticeship program facilities of the International Brotherhood of Electrical Workers (“IBEW”) Union Local 332 and the Plumbers, Steamfitters & Refrigeration Fitters Local Union 393 (“Plumbers”). District staff were very impressed both with the quality of the apprenticeship facility and the potential benefit that could be provided to District students if they were given an opportunity to take part in pre-apprenticeship and, ultimately, apprenticeship programs.

The electrical union’s program had approximately 1000 applicants last year and took approximately 30 of those in as first year apprentices. Approximately 40 of this union’s current apprentices are without work, which the IBEW indicated was the reason for keeping the number of persons in its current year’s program relatively low.

The piping union had approximately 400 applicants last year and took approximately 18 of those in as first year apprentices. The Plumbers also cited a current glut of work for its current apprentices for the relatively low acceptance rate for its current group of apprentices.

Appendix B to the PLA creates a Construction Technology Academy (“Academy”) which has also been referred to as a pre-apprenticeship program. This program has just begun at East Side. As a concept, the Academy is appealing and has been promoted by the Trades Council as a feature of the PLA that is a benefit to the District.

District staff, in particular the Curriculum and Instruction Department, reviewed the Academy proposal in Appendix B. Their conclusion was:

1. There is a District cost for the summer academy in the area of personnel (teacher) and transportation to and from the program.
2. There may be a mismatch between the District's graduation requirements (A-G) and the academy described by East Side.
3. The District is currently underutilizing the CCOC program by 47 students based on the demand on District students for credits towards graduation. The academy model could pose the same issues.
4. The overall response to the academy model proposal is that, although the model has some potential for success, it should not be the deciding factor in considering a PLA.
5. If the District goes forward with a PLA and also this program, the Curriculum and Instruction Department would need to develop the model collaboratively and redesign the proposal, before the District could agree to implement it.

J. ABC's Apprenticeship Programs

On October 28, 2003, District staff and legal counsel toured the apprenticeship program operated by the ABC in Hayward. District staff were impressed with this facility, although it was apparent that this facility does not have the funding that the union apprenticeship programs have. District staff notes that under the PLA, each worker would be paying a portion of its wages to the union apprenticeship program. Currently, the union Plumbers contribute over \$1.00 per hour worked toward the apprenticeship program. The Trades Council will not include in its PLA any financial support for a non-union apprenticeship program.

The ABC appears to allow workers to pay their own way to go through its apprenticeship program and does not limit its apprenticeship class based on ABC's analysis of the market need for apprentices. This is a different policy from the IBEW's and the Plumbers' acceptance policies.

K. Willingness to Accept Students Into Pre-Apprenticeship/Apprenticeship Programs

District staff asked the Trades Council if it would be willing to institute a pre-apprenticeship/Academy program even if the District decides not to institute a PLA, but the Trades Council was not interested in that proposition. District staff asked the ABC training representative at the ABC's apprenticeship facility if it would be willing to institute a pre-apprenticeship/Academy program, and he indicated that they would be very interested in such a program.

IV. ISSUES OF CONCERN TO DISTRICT STAFF

A. Project Size

As put together by District staff and as indicated in the District's Implementation Plan for Measure "F" Projects, virtually all of the work is broken into relatively small projects. Most are at or under \$2 million in estimated construction costs. All of the District's CMs agree that PLAs are best used, if used at all, on very large projects of at least hundreds of millions of dollars. These projects involve staffing, scheduling, and related issues so complex that coordination between an owner, a general contractor or CM, and all trade contractors requires a "pre-hire" agreement like a PLA. This is not the case on District projects.

B. Sufficient Number of Workers

The Trades Council's PLA indicates that the Trades Council will use its best efforts to ensure that the District's contractors, under a PLA, would be provided with sufficient workers to complete the projects. This could be beneficial in instances where there are not a sufficient number of workers in the area to staff the number of construction projects in the area. This occurred during the "internet boom" a few years ago. That does not appear to be the case currently. This could change in the near future if the amount of school bond money generates a much larger number of construction projects in the area. Unfortunately, the Trades Council can not guarantee a sufficient number of workers, but would likely do its best to ensure staffing for a District with which it had a PLA in place.

C. The Payment of Prevailing Wage

District staff has diligently taken all actions required by law related to any alleged, suspected, or actual prevailing wage violations by its contractors. The District is committed to continue to do so throughout the Measure F program and on all of the District's projects.

D. Labor Peace

One of the benefits of a PLA is the promotion of labor peace, i.e., no picketing, no strikes, no work stoppages. Up until a few months ago, the District had experienced very little, if any, labor unrest. District staff is concerned that if the Board does not approve a PLA, that there may be increased picketing and other labor disruptions at District sites. As indicated above, the PLA is obviously an organizing tool even though the Trades Council does not expressly state this. If the Trades Council cannot organize through the PLA, then it is logical to forecast that it will continue to organize through traditional organizing efforts like pickets.

E. Current Make-Up of District's Contractors

District staff estimate that sixty percent (60%) of its current contractors are union contractors and forty percent (40%) are non-union contractors. This includes all subcontractors. This (1) indicates that union representation on District projects is at a high level already and (2) the survey results of 1/4 to 1/3 of the respondents indicating they would be "less likely" to bid is undoubtedly representative of the non-union portion of the District's current contractors.

F. Smaller, Local Contractors

It is the District's understanding that many smaller local contractors are not union contractors. Some of these contractors have indicated that a PLA would force them to stop bidding on District projects because they cannot compete if they provide their own benefits packages while they also contribute into the trade union's benefit plans.

G. Core Workers

Under the proposed PLA the trade unions have the authority to determine which of the non-union contractors employees are to be considered "core" employees. Only core employees would be guaranteed to be dispatched to the contractor who normally employs them. Any other employees would be dispatched from the hall in the normal operations of that hall. This means they could potentially be dispatched to other jobs and other contractors.

The criteria used in determining whether or not an employee is to be considered "core" appears to be a subjective and undefined component, specifically the determination of whether or not they "have the ability to perform safely the basic functions of the applicable trade." If left unchanged, there exists an opportunity for discrimination against non-union contractors and its workers taking part in the Measure F program. If this opportunity were to be exercised, a worker could be deemed "unfit" to perform his trade and disallowed from working on Measure F projects. This could pose a significant risk to the non-union worker as well as the ability of the contractor/employers to successfully perform the work.

H. Union Interests

The Trades Council represents the workers of union contractors. It's stated purpose in promoting a PLA is to provide representation to all workers on District projects. District staff also notes that the Trades Council, its affiliated unions, and union workers may benefit financially at the expense of non-union workers. Under a PLA, one hundred percent (100%) of all premiums for all pension, apprenticeship, and other benefits for all workers on all District projects would go to union/management trust funds. Non-union workers that never join a union will likely never vest in union pension plans. Their premiums would increase the amount of those funds to the benefit of others.

I. Workers' Right to Vote on Representation

PLAs have been found to be legal even though they may overrule or take away a worker's right to vote for his or her bargained-for wage rate or benefit contribution. Although legal, District staff is aware that under a PLA, non-union workers will be asked to contribute to a union's benefit package that that worker had never seen and did not vote to approve.

J. District's Safety Record

One of the benefits that the Trades Council promotes with its PLA is increased safety on projects that include a PLA. This may very well be the case and would be a benefit to a district whose projects had a less-than-stellar safety record. At San Jose Unified, the District's safety record on its projects is extremely good, either because of the quality of the CMs who monitor the projects or the quality of the contractors already on District projects.