



Project Labor Agreements: What's Good, What's Bad, and What's Ugly

League of California Cities Public Works Officers Institute

March 13, 2024

4:15 – 5:30 p.m.

Speakers:

Jonathan Holtzman – Founding Partner, Renne Public Law Group (RPLG)

Julian Gross – Principal, Law Office of Julian Gross

Prentiss Jackson – Principal-in-Charge, Workforce Integrity & Training Solutions (WITS)



PLAs for Local Public Works Projects

Public Works Officers Institute
March 13, 2024

Law Office of Julian Gross
San Francisco, California

PLA Basics

A Project Labor Agreement (PLA) is a specialized type of labor agreement, covering project construction. It is a *contract*, not a law, policy, or regulation.

Parties for public works PLAs:

- Public Owner
- Construction trades unions & local Building Trades Council
- quasi-party status for contractors (prime and subs)

Basic Bargain:

- Public Owner gets:
 - assurance of labor peace and project support
 - possible advancement of workforce goals
- Unions get broad application of terms of collective bargaining agreements

PLA Basics: Legality

The legality of using PLAs under federal and state law is well-established.

Federal law:

- Leading case: *Boston Harbor*, 507 U.S. 218 (1993); see also *Rancho Santiago*, 623 F.3d 1011 (9th Cir. 2010)
- PLAs are *encouraged*, but not *required*, on federally-funded transportation projects

State law:

- Legality under state law established by Public Contract Code sec. 2500
- Sec. 2500 requires some specific PLA terms
 - requires explicit statement that union and non-union contractors can participate

PLA Basics: Contract Structure

- Public Owner enters into a PLA either for a single large project, or a set of projects
- Trades Council and individual unions sign the PLA
- Public Owner requires prime contractor to sign the PLA (included in bid specs and/or prime contract)
- Prime contractor requires subcontractors to sign a “Letter of Assent” to terms of the PLA

PLA Basics: Master Labor Agreements

PLAs reference the collective bargaining agreements of the unions that sign, and requires *all contractors (union or non-union!)* to comply with the collective bargaining agreements.

- PLAs *override* conflicting terms of collective bargaining agreements!
- Collective bargaining agreements = Master Labor Agreements = Master Agreements = “Schedule A” Agreements

Myth: you have to be a union contractor to bid on a PLA project!

PLAs negotiated by public entities *must* allow participation by non-union contractors

PLA Basics: Main Provisions

Every PLA contains the following basic provisions:

- an agreement by unions *not to strike* or take other collective action against the project or contractors working on it;
- requirements that contractors working on the project abide by terms of the relevant collective bargaining agreement in performance of project work;
- provisions describing *how* non-union contractors work under the PLA
- dispute resolution systems for quickly resolving any jurisdictional disputes between unions, and any violations of the PLA

PLA Deal Points: Negotiation Topics

Three major areas on which public entities generally wish to negotiate:

- Cost Control
- Targeted Hiring (Equity Issue!)
- Targeted Contracting (Equity Issue!)

NOTE: PLAs are not “form contracts” – they are negotiated agreements!!

PLA Deal Points: Cost Control

Deal points related to cost control center on *ability and willingness of non-union contractors* to participate:

- core workers
- benefits contributions
- use of non-union apprenticeship programs
- exclusions

Other cost-control options include:

- option to re-bid prime contract
- “rule of three”
- exemptions from PLA coverage: “carve-outs” / specialized crafts

PLA Deal Points: Equity Issues & Workforce

Targeted Hiring Requirements:

- local workers; disadvantaged workers
- Federally-funded projects:
 - New flexibility
 - affirmative action requirements (E.O. 11246)

PLAs can contain provisions that advance workforce goals by *overriding MLAs*:

- priority referral, *a.k.a.* “jump the list”
- alternate referral sources
- promote enrollment and utilization of new apprentices from quality, diverse pre-apprenticeship programs

PLA Deal Points: Equity Issues and Contracting

- Longstanding concerns regarding PLAs as an impediment to increased diversity in subcontracting
- Many public owners have existing policies targeting categories of contractors (small/local; DBEs; etc.)
- above issues regarding *participation by non-union contractors* are directly relevant to this issue
- Negotiated PLA terms can provide flexibility for categories of contractors – but underlying issues remain

Thank you!

More in the Q&A...

Law Office of Julian Gross
www.juliangross.net
julian@juliangross.net
415-602-2395

Public Works Officers Institute

Efficiency and Effectiveness in PLAs

Presentation Overview

Jonathan V. Holtzman, Managing Partner – Renne Public Management Group (RPLG)

- Overview
- Inefficiencies of PLAs
- Ideas for Efficiency
- Effectiveness
- Ideas for Effectiveness

Overview

A PLA is not a commodity; it is a contract. Like any contract, there are good PLAs and less good PLAs.

What makes a good PLA?

- Efficiency
- Effectiveness

Inefficiencies of PLAs

Outside of very large projects, all PLAs create inherent inefficiency.

Sources of inefficiency:

- PLAs reduce the pool of bidders – which drives price
- Transparency mechanisms that exist for work assignment have a tendency of an upscale to hire specialized trades for work
- Aspects of PLAs often limit newer construction methods or require payment of prevailing wage for non-prevailing wage work
- Need for oversight

Ideas for Efficiency

Top five issues to ensure that PLAs are efficient:

1. Carefully limited scope
2. Higher thresholds for coverage
3. Clarity, clarity, clarity
4. Necessary exclusions
5. Core workers

Effectiveness

- Legislative bodies (who typically initiate interest in having a PLA) typically justify a PLA/CWA based upon workforce development and/or employment of local residents.
- A **large** PLA with a **predictable workflow** in an area with **underserved or low-income population** can create employment opportunities, if the PLA is **properly structured**.
- Ideally, before considering a PLA, it is best to have considered and studied these issues.
- Although it requires courage, it is really staff's role to bring these issues into the light.
- Too many PLAs are justified by workforce development and hiring promises that were not achievable, even at the outset.
- At a minimum, if a PLA is not going to achieve these purposes, it helps argue for greater efficiency.

Ideas for Effectiveness

How to ensure Local/Targeting Hiring is successful:

- Monitoring/Governing body reporting
- Preference for for disadvantaged and local workers in the pre-apprentice programs and hiring halls
- Enforcement provisions that permit alternative sources of recruiting labor when goals not met
- Exclusions for SBEs/DBEs
- Outreach to minorities/disadvantaged contractors
- Grievance procedures that permits public agency to enforce goals

PLA Implementation

Presentation Overview

Prentiss Jackson, Principal-in-Charge of Workforce Integrity & Training Solutions (WITS)

- The Approach
- Labor Compliance & Project Marketing
- Enforcement
- Local Hire Program & Pipeline Development
- Pre-Bid, Pre-Construction, and Pre-Job Meetings
- Contractor Education & Information
- Local Hire Performance Data Visualization

THE APPROACH



THE APPROACH



Administration

- Conduct Pre-Bid, Pre-Construction & Pre-Job Meetings
- Provide Contractor Education & Outreach
- Facilitate Joint Administrative Committee



Enforcement

- Enforce the provisions of the CWA
- Manage Grievance and Arbitration
- Matters of Law and Matters of Contract
- Conduct Labor Compliance Monitoring



Local Hire and Apprentice Pipeline Development

- Leverage Community, Union, and Education Partnerships for Outreach & Recruitment
- Contractor relationship development
- Expand opportunities for Local Workers



Leveraging Data & Information toward Accountability & Impact

- Utilize real-time payroll, Local Hire and field data to inform decisions
- Provide City leadership and stakeholders with information on CWA impact

LABOR COMPLIANCE & PROJECT MONITORING



CPR Review

WITS' experienced Labor Compliance team will review all submitted CPR for prima facia compliance with the relevant prevailing wage determinations, ensure that fringe benefit statements and other required documents are current, and identify any unlisted subcontractors.



Site Visits & Worker Interviews

WITS conducts regular construction site visits to interview workers regarding work hours, wages, and classification.

Site visits are a critical tool for assessing CWA compliance to identify unlisted contractors.



Reconciliation of CPR

WITS will validate CPR accuracy by confirming at least one worker for at least one weekly period per month using independent sources, such as employee interviews, daily inspection reports, and payroll records, such as pay stubs and canceled checks.

LABOR COMPLIANCE & PROJECT MONITORING



CPR Submission Tracking

Regular and timely transmission of CPR allows the compliance team to regularly and quickly review CPR and reduces the administrative burden, and cost, of requesting CPR.

WITS utilizes a CPR Tracking Tool to monitor timely submission and notify contractors who fall behind.



Verification of Registered Apprentices and Certified Electricians

WITS utilizes CPR along with the California Division of Labor Standards Enforcement Apprenticeship Standards databases to verify the current standing of Apprentices (CA Labor Code § 3077) and Certified Electricians (CA Labor Code § 108.2).



"Paper" CPR Transcription

A recommended best practice is to require submittal via an electronic certified payroll system. If there is not one already used by the City, then WITS can provide one.

WITS has developed a system for transcribing "Paper" CPR to digital format which is utilized to analyze wage and local hire data.

ENFORCEMENT



Referral and Core Worker

WITS utilizes Certified Payroll Records, Inspection Reports, Site Visit data and regular communication with labor unions to ensure contractors adhere to the Referral and Core Worker provisions of the CWA.



Grievance & Arbitration

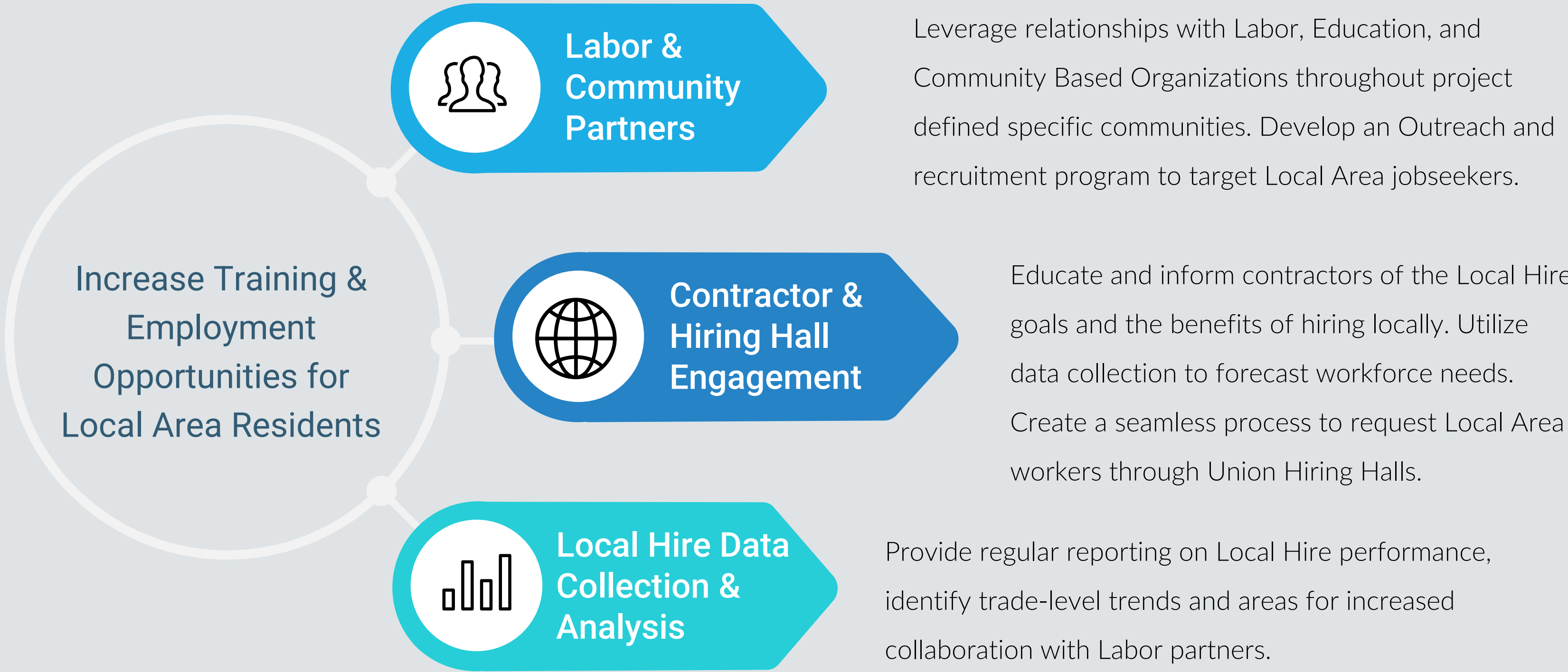
WITS has successfully facilitated the resolution of the grievance and arbitration process on several PLAs and CWAs. Rapid and amicable resolution requires transparency, and communication with all stakeholders.



Jurisdictional Disputes

WITS will facilitate the amicable resolution with all crafts - including those whose procedure is outside the National Building Trades Plan for the Settlement of Jurisdiction Disputes (Plan). Our experience includes helping prepare cases for the Plan and mediating resolution without arbitration.

LOCAL HIRE PROGRAM & PIPELINE DEVELOPMENT



CONTRACTOR EDUCATION & INFORMATION

LABOR STANDARDS FACT SHEET

*Information and requirements for contractors and subcontractors
bidding on public works contracts in the city*



- ✓ Pay workers the correct prevailing wage rates for each craft, classification and type of work performed. CA State Labor Code Section 1773 and 1774
- ✓ Submit certified payroll reports and fringe benefit statements into the city's electronic payroll reporting system (Elation Systems, Inc.). CA State LC Section 1776
- ✓ Maintain Labor Standards Enforcement (LSE) daily sign in sheets documenting all hours worked and the classifications of work performed.
- ✓ Display LSE provided posters at the jobsite, informing workers of Prevailing Wage requirements.
- ✓ Furnish employees with itemized pay stubs and retain payroll records. CA State Labor Code Section 226
- ✓ Employ apprentices registered in a state-approved apprenticeship program and make apprenticeship training contributions. CA State Labor Code Section 1777.5
- ✓ Register with the California Department of Industrial Relations (DIR). CA State Labor Code Section 1725.5

— All work is subject to compliance monitoring and enforcement by the city's Labor Standards Enforcement (LSE) team.

— LSE Compliance Officers have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks.

— Failure to comply with prevailing wage requirements shall result in a forfeiture of back wages due plus penalties of not less than \$50 per day per worker, and may result in disqualification as a contractor or subcontractor on any public work or improvement for the city or the state of California. CA State Labor Code Section 1775.



Documentation

WITS will develop fact sheets and hand outs outlining CWA provisions such as Referral, Core Worker, Local Hire and Prevailing Wage requirements.

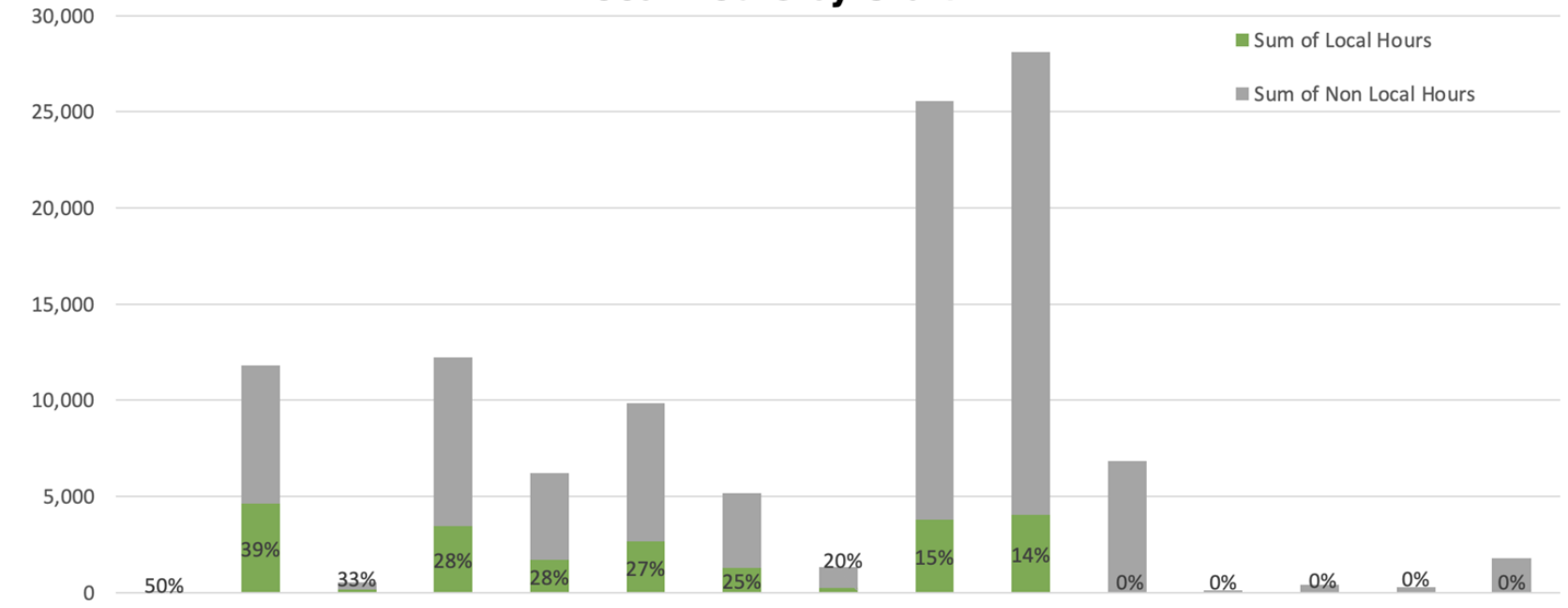


Resource and Guidance

WITS utilizes Pre-Job and Pre-Construction meetings to educate and inform contractors of their responsibilities under the CWA and to answer any questions related to compliance and expectation of performance.

LOCAL HIRE PERFORMANCE DATA VISUALIZATION

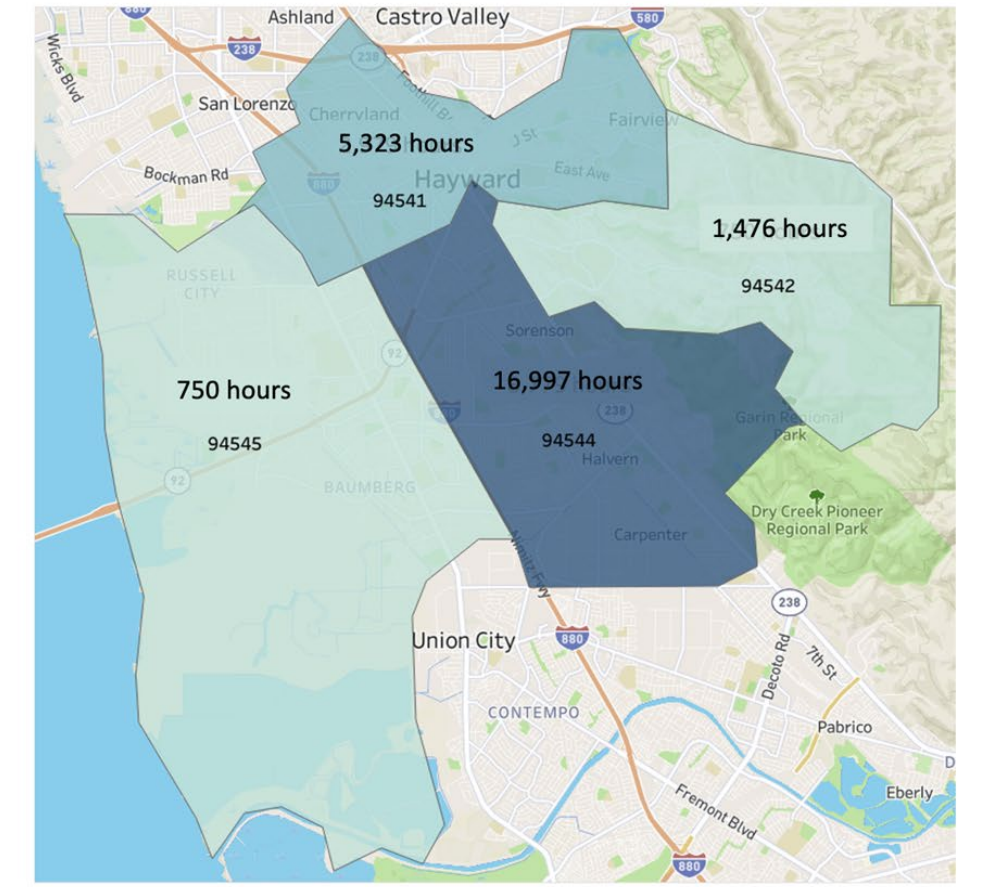
Local Hours by Craft



	Plasterer	Iron Worker	Sheet Metal Worker	Electrician	Plumber	Drywall Installer	Teamster	Cement Mason	Carpenter	Laborer	Operating Engineer	Asbestos Worker	Field Surveyor	Roofer	Bricklayer
Total Hours	16	11,755	490	12,210	6,169	9,797	5,145	1,287	25,532	28,067	6,782	62	374	247	1,724
Local Hours	8	4,616	160	3,438	1,703	2,661	1,266	255	3,783	4,034	16	0	0	0	0
Local Workers	1	13	1	4	5	7	31	9	9	21	1	0	0	0	0

Local Resident Hours Worked by Zip Code

Zip Code	Hours
94544	16,997
94541	5,323
94542	1,476
94545	750



Q & A

Thank you!

Jon Holtzman – Managing Partner, Renne Public Law Group (RPLG)

Phone: (415) 810 – 9447

Email: jholtzman@publiclawgroup.com

Prentiss Jackson – Principal-in-Charge, Workforce Integrity & Training Solutions (WITS)

Phone: (510) 502 – 9180

Email: prentiss@witsca.com

Julian Gross – Principal, Law Office of Julian Gross

Phone: (415) 602 – 2395

Email: julian@juliangross.net