



ASSOCIATED GENERAL CONTRACTORS of WASHINGTON

King County Council Meeting
1:00 PM, Tuesday, January 28, 2020
1200 King County Courthouse, Room 1001, Seattle WA 98104

To: Councilmembers Claudia Balducci, Chair; Joe McDermott, Vice Chair of Policy Development and Review; Reagan Dunn, Vice Chair of Regional Coordination; Rod Dembowski, Jeanne Kohl-Welles, Kathy Lambert, Dave Upthegrove, Pete von Reichbauer, Girmay Zahilay
RE: Public Testimony, Master Community Workforce Agreement

Dear Council Members,

Today, as you discuss the Draft Master Community Workforce Agreement (MCWA) negotiated between King County and Seattle Building & Construction Trades Council, Northwest National Construction Alliance II, and 15 local labor unions, the Associated General Contractors of Washington (AGCW) – which was not a participant in the County’s negotiations – asks you to consider the concerns of the commercial construction industry.

AGCW has remained committed to full and open competition for all public projects, and we strongly believe that the decision to enter into a collective bargaining agreement should be left up to the contractor-employer and their employees. Further, such a choice should not be imposed as a condition to compete for, or perform on, a publicly funded project.

Project Labor Agreements (PLA) or Community Workforce Agreements (CWA) negotiated without employers at the table restrain competition, reduce access to public works – particularly for small businesses and ‘open shop’ contractors including women and minorities, increase costs to the owner, often lead to jobsite disputes, and disrupt local collective bargaining including CBA’s the contractor and unions already have determined to be fair and reasonable. In cases where the use of a PLA or CWA benefit a particular project, the construction contractors qualified to perform the work are the first to recognize that fact and will entertain a PLA or CWA. But that decision cannot be made for them.

As you know, the draft MCWA before you was not negotiated with construction employers at the bargaining table. In addition to its departure from area Master Labor Agreements, it is not meaningfully responsive to the Priority Hire Ordinance Title 12.18A.4 which calls the MCWA to: *Include provisions to increase access for women-owned or minority-owned businesses, open shop contractors and small contractors and suppliers, and expand placements for both open shop and union apprentices.* The MCWA’s terms concerning open shop apprentices, and small firms do not constitute what contractors generally consider meaningful relief from the agreement’s overall exclusionary effects. Further, there is an absence of language which would increase access for women-owned or minority-owned businesses. The negotiated agreement does not meet the intent of the ordinance and does not support the County’s goals for increased equity in King County public works contracting.

Additionally, should King County proceed with the proposed MCWA, we are concerned the agency will run the risk of violating contractor rights under the National Labor Relations Act. The National Labor Relations Board in Seattle (supported by the NLRB Division of Advice in Washington, D.C.) is issuing a Complaint in Case No. 19-CE-234627, challenging a similar CWA executed by the Washington State Department of Transportation and 17 local labor unions. A copy of that underlying ULP charge is attached. King County invites the same legal problems if it requires bidders to sign the MCWA on future projects.

Thank you for your consideration of our concerns.

Sincerely,


A handwritten signature in black ink that reads "Sonja Forster". The signature is written in a cursive, flowing style.

Sonja Forster
Seattle District Manager
Associated General Contractors of Washington

cc: Ken Guy, Dow Constantine

Enclosed: AGCW ULP Case 19-CE-23467

CHARGE ALLEGING UNFAIR LABOR PRACTICE UNDER SECTION 8(e) OF THE NLRA

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring		
CASE NUMBER	DATE FILED	CHARGE FILED AGAINST
19-CE-234627	1-23-2019	Employer and Labor Organization <input type="checkbox"/> Employer <input type="checkbox"/> Labor Organization <input checked="" type="checkbox"/>
a. Name of Labor Organization (Give full name, including local name and number) United Association of Plumbers & Pipefitters Local 32		c. Tel. No. (425) 277-6680
b. Union Representative to Contact Jeffrey J. Owen		d. Cell No.
g. Address (Street and number, city, state, and ZIP code) 395 Monster Rd. SW, Ste. 213 Renton, WA 98057		e. Fax No. (425) 277-7370
		f. e-mail jeff@ualocal32.com
h. Name of Employer AGC of Washington		i. Tel. No. (206) 284-0061
m. Employer Representative to Contact David D'Hondt		j. Cell No.
n. Location of Plant Involved (Street, city, state, and ZIP code) 1200 Westlake Ave. N., Ste. 301 Seattle, WA 98109-3528		k. Fax No. (206) 285-4546
		l. e-mail
o. Type of Establishment (Factory, mine, wholesaler, etc.) Construction	p. Identify Principal Product or Service Construction	q. Number of Workers Employed
The above-named labor organization or its agents, and/or employer has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(e) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.		
2. Basis of the Charge (Be Specific as to facts, names, plants involved, dates, places, etc.) See attached.		
3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number) John M. Payne, Esq. and Brian P. Lundgren, Esq. (blundgren@davisgrimmpayne.com)		b. Tel. No. (206) 447-0182
a. Address (Street and number, city, state, and ZIP code) Davis Grimm Payne et al, 701 Fifth Ave Ste 4040, Seattle, WA, 98104		c. Cell No.
		d. Fax No. (206) 622-9927
		e. e-mail jpayne@davisgrimmpayne.com
4. Full Name of National or International Labor Organization of Which it is an Affiliate or Constituent (Not to be filled in when charge is filed by a labor organization)		
5. DECLARATION I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.		Tel. No. (206) 447-0182
By  (Signature of representative or party making charge)	John M. Payne/Brian P. Lundgren, Attorneys (Print name and title or office, if any)	Cell No.
		Fax No. (206) 622-9927
Address <u>701 Fifth Ave., Ste. 4040, Seattle, WA, 98104</u>		e-mail jpayne@davisgrimmpayne.com
Date <u>Jan 23, 2019</u>		

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Collection of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Charge Against Labor Organization or its Agents
Continuation Sheet

2. Basis of the Charge.

Since on or about April 2018, and prior thereto and continuing to date, the following Unions: Boilermakers Local 502; Bricklayers & Allied Craft Workers, Local 2; Cement Masons & Plasterers, Local 528; Heat & Frost Insulators & Allied Workers, Local 7; HOD Carriers & Laborers Union, Local 242; International Brotherhood of Electrical Workers, Local 46; International Union of Elevator Constructors, Local 19; International Union of Operating Engineers, Local 302; International Union of Painters and Allied Trades, District Council No. 5; Iron Workers Local 86; Northwest National Construction Alliance II; Seattle Building & Construction Trades Council; Sheet Metal Workers Local 66; Sprinkler Fitters Local Union 699; Teamsters Union Local 174; United Association of Plumbers & Pipefitters, Local 32; United Union of Roofers, Waterproofers & Allied Workers, Local 54 ("Unions"), and their constituent local Unions, have discriminated against, and caused or attempted to cause the Washington State Department of Transportation ("WSDOT") to discriminate against, the employees of various contractors based on their lack of union membership by forcing WSDOT to negotiate the full and complete terms of a Community Workforce Agreement ("CWA"), which is a project labor agreement, to cover the SR-520 Montlake to Lake Washington Interchange and Bridge Replacement Project ("Project"), and then impose the CWA, as a bid specification, on all potential bidders of the Project. The CWA was not negotiated between an employer primarily engaged in the building and construction industry and a labor organization representing any of the WSDOT's employees or seeking to represent any of the WSDOT's employees. The CWA was not negotiated within a

collective bargaining context. The CWA, which is mandatory for any contractor to sign to work on the Project, incorporates portions of various local Union collective bargaining agreements, and forces non-union contractors and union contractors to involuntarily recognize various local Unions, abide by certain terms of those Unions' local collective bargaining agreements, and force their employees to assume the financial obligations of union membership after seven (7) days, or be discharged. Moreover, the CWA discriminates against non-union employees by insuring that only three employees of an open-shop contractor's workforce are entitled, as a matter of right, to be employed on the Project, and requiring that all other employees employed by such contractor must be referred by the relevant signatory Unions. Such provisions, and others, discriminate against the employees of non-union contractors on the basis of their lack of union membership, and thereby restrain and coerce employees, in the exercise of their Section 7 rights.

Furthermore, the Charging Party states the following:

- (1) A signed labor agreement ("CWA") is in place between WSDOT and 17 labor organizations. Many of those labor organizations will have no role in this Project.
- (2) That labor agreement contains a subcontracting provision that requires all contractors and subcontractors on the project to agree to be bound by all terms of the CWA. This CWA also contains a Union Security clause which violates *Janus v. AFSCME Council 31*, 138 S.Ct. 974 (2018).
- (3) WSDOT is not an employer engaged primarily in the building and construction industry. It is acting as a regulator. The Unions do not represent any of WSDOT's employees.

- (4) WSDOT does not have a collective bargaining relationship with the Unions in question. WSDOT has no employees in the building and construction industry, and does not intend to employ any.
- (5) Therefore, the Unions named have violated Section 8(e) of the Act.
- (6) This labor agreement also violates Section 8(f) of the Act.