



Year in Review:

ABC's Government Affairs Activities in California in 2008

ABC's comprehensive government affairs programs at the state and local level in California continued their aggressive defense of the Merit Shop in 2008. ABC fought relentlessly for fair and open bid competition and the freedom for workers to choose training from ABC's apprenticeship programs.

In perhaps the biggest victories of the year for the Merit Shop, ABC derailed three construction union plots to use environmental objections to block the approval of large industrial and commercial projects until the owners signed Project Labor Agreements (PLAs). Through mailers, outreach to news media, lobbying, and speaking at public hearings, ABC led the charge in stopping PLAs for power plants in Victorville and Riverside and a refinery upgrade in Bakersfield.

ABC also played a leadership role in exposing union environmental extortion against the following projects: a massive redevelopment project in downtown Sacramento, a new university and related development in Placer County, a power plant in Fresno County, a power plant in Lodi, a solar complex in San Luis Obispo County, a hotel in Santa Cruz, a hospital in Elk Grove, and a dual hotel project in San Diego. Regrettably, despite the strong support of ABC for the project, a developer abandoned its plan to build a \$1 billion hotel and convention center in Chula Vista after resisting union environmental extortion for two years.

At the end of 2008, there were no PLAs in effect for any local government based in Orange County, San Bernardino County, or Riverside County, and San Diego County finished its ninth year without a new government-mandated PLA. ABC was a leader in beating back an attempt to repeal the PLA prohibition in Fresno. However, government-mandated PLAs continued to be a nagging problem in Los Angeles County and the San Francisco Bay Area, and following the November election there was an explosion of new PLA threats.

Throughout the state, unions pressured charter cities to require contractors to pay prevailing wage. ABC promoted the fiscal benefits of exempting charter cities from prevailing wage.

ABC in California was active in the courts fighting for the Merit Shop. ABC of California played a key role in a U.S. Supreme Court decision striking down a California state law compromising the ability of state contractors to argue the case against unionization to employees. ABC of California was the only organization to support a charter city defending its right in court to exempt its local construction from state prevailing wage mandates. ABC apprentices lost a federal district court decision concerning the legality of a PLA for community college projects, but the case will be appealed. ABC also saw a state appeals court rule that the state legislature could require contractors to employ an all-union workforce for its own projects at the capitol complex. Finally, ABC filed a complaint with the National Labor Relations Board concerning a union harassment campaign in Bakersfield.

At the state capital, most bills that ABC opposed died in the legislature or were vetoed by the Governor. In a victory for ABC, the Governor vetoed \$5.4 million in funding for the notorious University of California Labor Institute, but the University of California somehow found \$4 million for the program to keep operating.

The Merit Shop took some hits from regulatory agencies, as the Department of Industrial Relations (DIR) expanded prevailing wage coverage, in particular through a decision stating that a contractor should have paid prevailing wages to workers engaged in off-site fabrication. ABC followed these decisions closely and provided comments in defense of the Merit Shop. Regrettably, the Merit Shop failed in a regulatory effort to change Section 208 regulations concerning prevailing wages to apprentices on private projects, and the unions continue to use the state's "needs test" to block the approval and expansion of apprenticeship programs.

Finally, ABC has never been more active in California local elections than it was in 2008. ABC started the year with a satisfying recall of a city council member in Pinole who was the backer of one of the state's first government-mandated PLAs. ABC of California and the California chapters of ABC were then involved in several dozen state and local elections in the June primary and November general elections. The results were generally grim. ABC will have significant challenges in 2009 and 2010.

As Senator John Thune (R-SD) said about ABC at the 2008 ABC National Legislative Conference, "A lot of organizations follow the power ... (but) you stand on the issues." Or as Congressman John Kline (R-MN) said at the same conference about ABC's attention to labor issues, "You are miles ahead of the rest of the employers out there ... they dozed off; they fell asleep." In 2009, ABC will be wide awake and standing strong on the issues in California as we enter a challenging economic and political climate. ABC knows how to fight and win in California.

UNION ORGANIZING

ABC of California Plays Key Role in U.S. Supreme Court Decision Killing Union-Backed California Law

A 7-2 decision of the United States Supreme Court on June 19 creates a new standard for government neutrality in union organizing campaigns and gives business groups new opportunities to challenge state and local laws that give special preferences to unions, including laws on apprenticeship and perhaps Project Labor Agreements (PLAs). The court case involved Assembly Bill 1889, signed into law by Governor Gray Davis in 2000, which prohibited contractors from using money earned from state contracts to "deter union organizing," whatever that meant in the eyes of the unions. (ABC of California had opposed the bill.)

ABC of California took a leading and successful role in urging the U.S. Supreme Court to accept this case for review. ABC of California filed an amicus (friend-of-the-court) brief through its general counsel, Robert Fried, assisted by Tom Lenz, both of Atkinson, Andelson, Loya, Ruud & Romo. ABC of California's brief added important background related to the 1993 "Boston Harbor"

U.S. Supreme Court decision that elaborated on the distinction between the roles of a government as a market participant and a market regulator. ABC urged the court not to regard that case as authorizing laws that grant preferences for unions.

Subsequently, as part of the Supreme Court's deliberations, outside groups were invited to submit amicus briefs presenting their perspectives on the case. The Solicitor of the United States subsequently echoed the position taken by ABC. Thereafter, ABC National and ABC of California filed a joint brief, and Robert Fried assisted in preparation for oral argument and attended the oral argument before the Supreme Court.

The Supreme Court ruled that the offensive California law was preempted by federal law because it regulated within "a zone protected and reserved for market freedom" as defined in the Boston Harbor decision. ABC of California pinpointed the argument used by the Supreme Court to strike down the law.

"GREENMAIL" – ENVIRONMENTAL PERMIT EXTORTION

City of Victorville Resists Union Objections to Power Plant with Prodding from ABC

In 2007, California Unions for Reliable Energy (CURE) became an intervenor in the power plant licensing process at the California Energy Commission (CEC) for the \$850 million Victorville 2 Solar Hybrid Power Plant. Adams Broadwell Joseph & Cardoza, the law firm representing CURE, filed two massive data requests with the CEC and then filed a 136-page objection to the preliminary CEC staff report in January 2008. In addition, CURE filed a lawsuit in Riverside County Superior Court alleging that the Mojave Desert Air Quality Management District inappropriately issued particulate matter credits to the city, thus violating the federal Clean Air Act.

In February 2008, ABC learned that the City of Victorville was seriously considering a PLA to remove these obstacles to approval of the power plant. ABC stepped up its pressure against the PLA with testimony at public hearings and outreach to the local news media and business groups that exposed CURE's extortion. In May, the ABC Southern California Chapter mailed flyers to 10,000 Victorville residents warning them that construction unions were filing lawsuits and holding up the permitting process in order to win a PLA for the power plant. The mailer urged residents to contact the Victorville City Council and the power plant developer, Inland Energy, in opposition to a PLA.

CURE slowed the project down by several months, but the City of Victorville and the power plant developer did not surrender to the unions. ABC got a break on June 30, when a state superior court judge rejected CURE's environmental lawsuit. On July 16, CURE experienced another setback to its scheme when the CEC voted 5-0 to approve a license for the power plant despite CURE's objections. ABC was at the meeting to attack CURE and its motivations.

Unions Fail to Block Approval of Bakersfield Refinery Upgrade

The ABC Central California Chapter enjoyed a decisive victory over construction unions and their extortionist law firm Adams Broadwell Joseph & Cardozo on October 21, when the Kern County Board of Supervisors voted to approve a \$700 million expansion and modernization of the Big West/Flying J refinery in Bakersfield.

In 2005, Ogden, Utah-based Flying J bought the Shell refinery in Bakersfield and began operating the refinery under its Big West Oil subsidiary. The company planned an upgrade of the refinery, but in March 2007, the law firm of Adams Broadwell Joseph & Cardoza filed a massive objection to Kern County's draft environmental impact report (EIR) for the project on behalf of six construction unions, three individuals, and the phony "Association of Irrigated Residents." This objection forced the county to withdraw and rewrite its EIR. Although unions had used greenmail to win PLAs on a few power plants in Kern County in the late 1990s, this was the first time unions targeted one of the refineries in Bakersfield. In the meantime, union officials met with Flying J officials and provided them with a PLA and 20-year union-only maintenance agreement for them to sign. Unions also had pro-union Kern County Supervisor Michael Rubio contact a Flying J official to pressure him to hold more meetings with union officials.

ABC worked to expose the true motivation of the objections to the EIR to elected officials and the public. The August 20 Bakersfield Californian newspaper reported on how the ABC Central California Chapter was pointing out that the unions' real intent was to delay the project until Flying J/Big West signed a PLA for the project. Also on August 20, a representative of the ABC Central California Chapter talked about the unions' extortion on a local radio talk show.

On September 25, the Kern County Planning Commission voted 5-0 to recommend that the Kern County Board of Supervisors approve the project. At this meeting, overwhelmingly attended by supporters, one prominent person continued to object to the project: Gloria Smith, who claimed to represent a group called "Bakersfield Refinery Coalition." An ABC representative explained the motivations of Ms. Smith and urged the commissioners to send a message to the greenmailing extortionists by recommending that the Board of Supervisors approve the project. The audience responded with enthusiastic applause. One commissioner later asked Ms. Smith to come to the podium, and under questioning she revealed she was not a resident of Bakersfield and worked for the law firm of Adams, Broadwell, Joseph & Cardoza.

As the vote at the Board of Supervisors approached, the ABC Central California Chapter sent mailers to 15,000 local supporters of the project informing them about the union extortion and encouraging them to contact the Board of Supervisors and attend the meeting in support of the project. At the meeting, an ABC representative spoke for several minutes about Adams Broadwell Joseph & Cardoza and their "greenmail" environmental extortion on behalf of construction unions. ABC described the Adams Broadwell submissions as a "document dump" and "regurgitated questions." Supervisor Michael Rubio criticized ABC for the statement. But the project was approved.

Riverside City Council Allows Power Plant to be Bid without PLA Requirement

In 2004 and 2005, the City of Riverside successfully fended off an effort by California Unions for Reliable Energy (CURE) to block the construction of a municipal power plant. An ABC member, The Industrial Company (TIC), ended up building the power plant. In 2008, the City of Riverside applied to the California Energy Commission for a license for a second power plant, and CURE once again began troubling the city with its greenmail threats.

ABC received a letter from the City of Riverside's Public Utilities Department asking for answers to questions about labor supply and labor peace. The letter contains the same verbiage as a letter received by ABC from the Kings River Conservation District, which was also considering a PLA. Then, in a three week period, the ABC Southern California Chapter and allied groups succeeded in flipping what appeared to be an unstoppable staff-driven push for a PLA in the City of Riverside into a defeat for the unions.

Openly fearing the environmental objections from CURE, the utilities staff for the City of Riverside abruptly tried to push through the city council a requirement that contractors on the proposed Riverside Energy Resource Center Units 3 & 4 would have to sign a PLA with construction unions. On August 14, the Land Use Committee of the Riverside City Council heard the staff argument in support of the PLA but took no action other than to refer it to the full council. On August 15, the Riverside Board of Public Utilities, a group appointed by the city council, voted 9-0 to recommend a PLA. The situation looked grim for the Merit Shop.

But the ABC Southern California Chapter resisted the drive for a PLA. It organized contractors and urged the city council to reject the PLA. The chapter sent a mailer to 15,000 Riverside households urging them to contact the city council to oppose the PLA. The Riverside Chamber of Commerce took a position in opposition, and leaders of the Riverside County Republican Central Committee asked Republican city council members to vote it down. On the day of the vote – August 26 - the Riverside Press-Enterprise newspaper published an editorial against the PLA. More than 175 non-union employees of several ABC member companies showed up at the city council meeting, outnumbering more than 100 union workers there to support the PLA.

Despite appeals from union officials to require the PLA, the city council voted 7-0 to direct staff to issue bid requests for the power plant both with and without a PLA. They also asked staff to develop bid specifications that would include a "community benefit agreement" to ensure that local workers were involved with building the power plant.

ABC Helps to Expose Union-Backed Environmental Lawsuit Against Sacramento Railyards Project

On January 9, lawyer William D. Kopper filed a California Environmental Quality Act (CEQA) lawsuit against the City of Sacramento claiming that the city failed to prepare an adequate environmental impact report (EIR) for the \$6 billion Sacramento Railyards project. Kopper is a "greenmail" lawyer routinely hired by construction unions to block large construction projects with environmental lawsuits until the developers agree to sign a PLA.

A Sacramento Bee article subsequently revealed Kopper's record of lawsuits on behalf of construction unions, and an editorial in the Bee ("CEQA's Being Hijacked; Where Are the Enviros?") complains that the state's "environmental groups watch silently as special interests misuse state's key statute." It referred to greenmail on behalf of construction unions by the William D. Kopper law firm and the law firm of Adams, Broadwell, Joseph & Cardoza.

On April 15, a newly-formed group called the Coalition to Revitalize the Railyards held a press conference at the site of the planned \$6 billion Railyards project in downtown Sacramento to expose and criticize the lawsuit. The press conference coincided with the introduction of the Coalition to Revitalize the Railyards web site to support the project and expose the greenmail meant to stop it. With the backdrop of dilapidated buildings and weed-strewn fields, association representatives and contractors (there with numerous construction workers) described how construction unions are jeopardizing the project as they exploit the California Environmental Quality Act (CEQA) to try to force the developer, Thomas Enterprises, to sign a PLA. Press coverage included stories on two local TV newscasts and an article on the Sacramento Business Journal web site.

Union-Backed Lawyer Objects to New University Campus Near Sacramento

The Placer County Board of Supervisors voted 5-0 on November 4 to approve the Regional University Specific Plan, which would establish a 600-acre West Coast campus of Drexel University in Roseville along with a 500-acre adjacent commercial and residential development to be closely associated with the university. Objecting to the project on environmental grounds was lawyer William D. Kopper, who claimed to be representing a mysterious organization called "Placer Citizens Against Gridlock" and three untraceable individuals. Kopper filed a substantial objection to the draft Environmental Impact Report (EIR) for the development and spoke against the project at the Placer County Planning Commission meeting on September 25. Kopper works for construction unions and wants the land owners to sign a PLA for the projects.

After Kopper made his bogus statement about the numerous environmental problems he saw with the project, the Board of Supervisors hit him with a barrage of questions and accusations about his extortion for construction unions. Kopper refused to answer a question about where he gets his funding for his extortion work, and he denied he works for the unions. One supervisor asked Kopper what he thought of a Sacramento Bee editorial attacking him for abusing the California Environmental Quality Act. (He wouldn't answer the question.) Kopper struggled to deal with the attacks in front of a room full of project supporters. Then an ABC representative spoke out against Kopper and asked the Board of Supervisors to urge the property owners and future developers to resist Kopper and refuse to sign a costly PLA. Kopper has since filed a lawsuit to halt the project.

ABC Stokes Opposition to PLA on Kings River Conservation District Power Plant

On February 26, the Board of Directors' Ad Hoc Power Committee for the Fresno-based Kings River Conservation District met and directed staff to negotiate a PLA with the unions for the proposed Community Power Plant, presumably to avoid California Unions for Reliable Energy (CURE) from objecting to the project. In early January, ABC had submitted written answers to demeaning

questions from district staff concerning Merit Shop contractors' ability to employ enough skilled workers and keep their workers from engaging in labor unrest.

ABC then worked to inform local citizens and the business community about the PLA threat. The April 11 Fresno Business Journal reported that the district's elected board of directors might vote in the next two months on a negotiated PLA for the power plant. But the Fresno Chamber of Commerce, the Hanford Chamber of Commerce, and several legislators in the area took formal positions against the PLA. ABC alerted all of the local chambers of commerce and farm bureaus in the district about the PLA threat. In May, the ABC Golden Gate Chapter mailed 11,000 flyers urging ratepayers in the district to contact their elected directors in opposition to a PLA for the proposed Community Power Plant. During this time, ABC representatives and others spoke at multiple meetings of the board of directors against the PLA.

The district responded by distributing a ratepayer-funded newsletter that included a pro-PLA response to ABC's attacks on PLAs. The board of directors stated its intention to establish an ad-hoc committee that would consider ways to respond to ABC's nettlesome opposition to the PLA. ABC responded to this by sending an e-mail to contractors and political and community leaders in Fresno and Kings Counties encouraging fiscal conservatives to consider running for the elected board seats. While no candidates came forward, there has been no recent action concerning a PLA.

ABC Exposes Greenmail Against Proposed Solar Farm Near San Luis Obispo

Assembly Bill 32, the so-called "Global Warming Solutions Act" signed into law by Governor Schwarzenegger in 2006, spurred several companies to begin the process of obtaining licenses from the California Energy Commission (CEC) to build huge "solar farms" in very arid regions of the state. In 2008, the CEC began considering the first of these projects, a 177-megawatt facility to be built by Palo Alto-based Ausra in rural inland San Luis Obispo County. While Ausra plans to use contractors from Kern and San Luis Obispo counties, California Unions for Reliable Energy (CURE), represented by the law firm of Adams, Broadwell, Joseph & Cardoza, has intervened in the licensing process and has filed burdensome data requests and lawsuits to slow the project down as it seeks a PLA. An ABC representative and others spoke in support of the project and against the agenda of CURE at a CEC meeting in Santa Margarita on April 12. The controversy was reported in the April 13 San Luis Obispo Tribune.

Bill to Make Greenmail a Crime Fails to Pass Senate Committee

ABC of California was part of a large coalition of construction groups – representing union and non-union contractors as well as developers – in support of Senate Bill 1631. Authored by Senator Dick Ackerman (R) on behalf of Associated General Contractors (AGC), this bill would have created a misdemeanor crime for any person who filed or threatened to file an environmental objection to a public works project in order to obtain or extract money or other thing of value from the person. Under the definition of "public works" in Labor Code Section 1720, applicable projects would have included numerous private projects that get public subsidies or other public benefits.

Opponents of the bill included various umbrella groups for construction unions, including the State Building and Construction Trades Council. The bill failed in the Senate Government Organization Committee on April 15 on a 5-5 party line vote, with Republicans in support and Democrats opposed.

Unions Target Lane Field Development in San Diego; ABC Exposes Union Threat

On January 9, the Unified Port of San Diego's Board of Port Commissioners voted unanimously to authorize a permit for the construction of a \$400 million dual hotel project on the site of the Lane Field former baseball stadium. But lurking behind the approval were "greenmail" threats from the International Brotherhood of Electrical Workers (IBEW) and the UNITE-HERE union, which wants the hotels to have unionized workers.

ABC and other interested parties did not let these union threats go unanswered. On January 7, the Build the Bayfront Coalition, led by the Coalition for Fair Employment in Construction, held a press conference at Lane Field to support the Lane Field project and expose the greenmail. Speakers included representatives of the San Diego Regional Chamber of Commerce, the San Diego Regional Economic Development Corporation, the San Diego Citizens Against Lawsuit Abuse, and the Black Contractors Association. Press coverage included two local news programs, the Roger Hedgecock radio show, and the San Diego Business Journal.

Unions Continue to Rail Against La Bahia Project in Santa Cruz

In pursuit of a PLA, construction unions in Santa Cruz County have been trying to undermine an effort to renovate the La Bahia apartments into a boutique hotel. An article in the May 9 Santa Cruz Sentinel reported that an "information session" for the proposed hotel turned into a shouting match as a union boss for the Carpenters Union demanded an all-union project. On May 28, two minutes before the deadline to submit comments, an organization called Build a Better La Bahia Coalition filed an objection to the revised draft environmental impact report (EIR) prepared by the City of Santa Cruz for the La Bahia project. The city had been forced to revise its original EIR from 2007 when the Carpenters Union filed a massive objection.

With the assistance of the ABC Golden Gate Chapter, thirty-three Merit Shop contractors in Santa Cruz and Monterey Counties ran a series of advertisements in the Santa Cruz Sentinel newspaper promoting their companies and their local employees. The advertising campaign was meant to contradict the lies of the construction unions. The advertisements included the ABC logo and cited ABC as the voice for Merit Shop jobs in construction.

To the dismay of union officials, the Santa Cruz Planning Commission voted 3-2 on August 7 to approve a version of the hotel proposal. Meanwhile, construction unions and other local activists in the "Build a Better La Bahia Coalition" have held rallies against the project. A Santa Cruz Sentinel editorial supported the project and decried the campaign of the unions to derail it.

Unions Target Proposed Lodi Power Plant for PLA

The Roseville-based Northern California Power Authority (NCPA) is a joint powers agency that generates electricity for 17 local government agencies in Northern and Central California, including cities, municipal utilities, an irrigation district, the Port of Oakland, and the Bay Area Rapid Transit (BART) District. NCPA has applied to the California Energy Commission for a license to build a 255 megawatt power plant in Lodi, and NCPA officials have already met with construction union officials about signing a PLA in order to avoid having California Unions for Reliable Energy (CURE) intervene in the licensing process and delay the project. An ABC representative spoke at the agency's December 4 meeting against CURE and PLAs in the opening salvo of ABC's fight against the union extortion against this project.

Sutter Health Considers PLA for Elk Grove Facility to Avoid Union Objections

Sacramento-based Sutter Health is planning the construction of several new medical facilities as well as seismic retrofits of existing facilities throughout Northern California. ABC and the Coalition for Fair Employment in Construction confirmed that Sutter Health is considering PLAs for some of those facilities, including a new hospital in Elk Grove. In 2004, Sutter Health signed a PLA with construction unions to win their support for an expansion of an existing medical center in midtown Sacramento, even as the Service Employees International Union (SEIU) tried to block the project with environmental objections and lobbying of city council members. ABC tried unsuccessfully to convince the Elk Grove Planning Commission to question Sutter Health officials about their plans for a PLA before they approved the project on December 18. In early December, the Coalition for Fair Employment in Construction sent mailers to thousands of Elk Grove residents warning them that Sutter Health was planning to limit construction of the new medical facilities to union workers and asking them to e-mail the Sutter Health board of trustees.

Gaylord Entertainment Abandons Bayfront Project in Chula Vista

In 2007, the ABC San Diego Chapter directed an outstanding and effective public relations campaign exposing to the general public how construction unions were threatening to use environmental objections to block Gaylord Entertainment from building a \$1 billion resort and convention center in the City of Chula Vista. The unions wanted Gaylord to sign a PLA. The company was open about the union extortion against it and declared that it would not sign the rigid union-only PLA that the unions were demanding. At one point in 2007, Gaylord temporarily gave up on the project because of the union extortion. The unions would not back down despite the blows to its reputation among San Diego County leaders and the general public.

In March, a burst of news coverage about the project reported that Gaylord Entertainment was still unwilling to succumb to union greenmail and sign a PLA for the project. Finally, on November 17, Gaylord Entertainment submitted a letter to the Mayor of Chula Vista announcing that it was discontinuing its efforts to build the Bayfront project. The letter cited funding hurdles but also mentioned "a complicated regulatory and legal structure, as well as conflicting community interests." ABC and other organizations blamed construction unions for the failure of the project. Meanwhile, Gaylord Entertainment now plans to build a resort and convention center in Mesa, Arizona.

GOVERNMENT-MANDATED PROJECT LABOR AGREEMENTS

Fresno City Council Preserves Open Competition Ordinance

The chairman of the Fresno City Council placed an item on the council's December 9 agenda to repeal the city's ban on PLAs, which was implemented in 2000. Local political insiders contended there could be a 4-3 vote in favor of repealing the ban. ABC worked intensely to get the word out to contractors and business groups and quickly stir up community opposition to the proposal. ABC members responded quickly, and on the day before the meeting, twelve contractor representatives were meeting with city council members. The local chapter of Associated General Contractors, the Fresno Builders Exchange, the Fresno Chamber of Commerce, the Fresno County Republican Party, and the Fresno County Lincoln Club all activated their members against the proposal. News media was informed. E-mails and phone calls began pouring into the city council.

On the day of the vote, 75-100 people were in the city council chamber for the item. A city council member moved that the item be tabled because of the divisiveness of the issue. The motion was approved 6-1. Fair and open competition was preserved for the City of Fresno.

Foothill-DeAnza Community College Board Narrowly Approves PLA

On April 7, the Foothill-DeAnza Board of Trustees voted 3-2 for a PLA with the Santa Clara and San Benito County Building Trades Council for all projects worth \$200,000 or more funded by the \$490 Measure C construction bond approved by voters in June 2006. Initially it looked like the unions would win this PLA on a 5-0 vote, but over the past year ABC, the Coalition for Fair Employment in Construction, and a handful of local contractors were able to make enough of a case against the PLA that two board members voted against it. While the college board of trustees authorized \$35,000 to hire a negotiator for the PLA, in the end the unions won almost every condition they demanded.

Board of College of Marin Approves PLA for Two Large Projects, but Half of the Construction Remains Under Open Competition

On June 24, the Board of Trustees for the College of Marin voted to require contractors to sign a PLA with the Marin County Building and Construction Trades Council for two large projects: the Science/Math/Central Plant Building (Kentfield Campus) and Main Building (Indian Valley Campus). These projects comprise approximately half of the \$250 million bond approved by voters as Measure C in 2004. The board approved negotiations for a PLA on a 6-1 vote in June 2007 despite vigorous opposition from the ABC Golden Gate Chapter.

There were three unusual items in the College of Marin PLA of interest for ABC. First, the PLA applies to contractors explicitly "including construction building material delivery truckers, trucking companies and trucking brokers." Second, an eligible apprenticeship program must have graduated an average of 10 apprentices annually for the past five years. (Up to now, the policy that unions have promoted at the state legislature and local governments is that eligible programs must have graduated apprentices in each of the past five years.) Finally, the unions "agreed" to use the services of the

"Center for Military Recruitment, Assessment, and Veterans' Employment" to operate a Helmets to Hardhats program for all the veterans who have returned to Marin County. This organization is actually a labor-management cooperation committee (funded by employer payments indicated in collective bargaining agreements).

San Francisco Unified School District Adopts PLA for School Construction

The board of trustees of the San Francisco Unified School District voted unanimously on June 24 to adopt a PLA negotiated with the San Francisco Building Trades Council for most projects funded by the \$450 million Proposition A bond approved by voters in November 2006. The school district's Buildings, Grounds, and Services Committee had approved the PLA on the previous day. The San Francisco-based American Asian Contractors Association (AACA) was the lead opponent of the PLA, but ABC provided background and strategic advice to local contractors both before and after the vote. While the San Francisco Unified School District had approved negotiations and even a final document for a PLA on a bond measure approved in 2003, that PLA was never implemented.

Los Angeles Unified School District Extends PLA for Another Five Years

On September 23, the board of trustees of the Los Angeles Unified School District perpetuated its long history of fiscal irresponsibility and mismanagement by voting to extend its Project Labor Agreement (PLA) for another five years. The original PLA was approved by the board in 1999, and since then contractors have been required to sign PLAs to work on projects funded by four bond measures covering more than \$20 billion worth of construction. Voters within this school district approved another bond measure worth \$7 billion on November 4. This school district receives substantial bond money from the state for construction, so every state taxpayer is funding the union monopoly on Los Angeles school construction.

Unions Gain Control of Los Angeles Community Redevelopment Agency Projects

On October 2, the Board of Commissioners of the Los Angeles Community Redevelopment Agency voted to approve a PLA negotiated with the Los Angeles/Orange County Building and Construction Trades Council for future projects. The Los Angeles City Council then unanimously approved the PLA on October 29.

The ABC Los Angeles/Ventura Chapter and the Coalition for Fair Employment in Construction spent several months trying to encourage staff of the Community Redevelopment Agency to negotiate terms and conditions that would not discourage non-union contractors from bidding. This effort failed.

This adds to existing government-mandated PLAs in Los Angeles for the Los Angeles Unified School District and the massive Los Angeles International Airport expansion, and selected projects of the Los Angeles Board of Public Works, the Los Angeles Department of Water and Power, Los Angeles World Airports, the Port of Los Angeles, and Metropolitan Water District of Southern California (headquarters in Los Angeles). With the election of State Senator Mark Ridley-Thomas on November 4 for a seat on the Los Angeles County Board of Supervisors, Los Angeles County

projects may be lost to the Merit Shop as well. Once a bastion of open shop construction, Los Angeles now contends for the title of being the most pro-union city in the country.

Port of Los Angeles/Long Beach Looks at PLA for All Work

On March 14, the Los Angeles City Council voted unanimously to request that the Port of Los Angeles approve a PLA for the construction of the new Port Police Headquarters and to request that the Port of Los Angeles develop and recommend a policy for approval by the Board of Harbor Commissioners that all future construction projects on Port property include PLAs. Representatives of ABC and the Coalition for Fair Employment in Construction used the public comment period at the June 5 meeting of the Los Angeles Board of Harbor Commissioners to speak against a proposed PLA for all construction at the Port. The chairman of the board suggested that they speak to the Los Angeles City Council about it.

State Fund Declares Only Union Contractors Can Work on a Project

State Compensation Insurance Fund (State Fund) has union officials on its board of directors, who are appointed by the Governor. This probably explains why a November request for proposals to retrofit an existing building automation system at the State Fund district office in Fresno included a requirement that “only UA union labor will be used in all on-site construction work on the project.” In addition, the contractor qualification questions included this: “Does your company utilize signatory (union) technician labor? If so, please state which union(s) you intend to utilize for this work (e.g.; U.A. Pipefitters, Operating Engineers, Sheet metal, other).”

A Fresno-based ABC member contractor that was invited to submit a proposal for this local project was told by a San Francisco-based State Fund official via e-mail that “If I had known you were non union I would not have asked you to bid. If necessary I will refer this matter to our attorneys. Thank you for you (sic) bid.” The ABC Golden Gate Chapter is working to change the requirement.

Alameda County Approves PLA Negotiations and Plans PLAs for All Projects

On November 4, the Alameda County Board of Supervisors voted 5-0 to begin negotiations with unions for a PLA covering the Acute Tower Hospital Replacement at the county’s Highland Hospital. This is the first PLA on an Alameda County project, but there will soon be many more: the board also directed staff to develop criteria for a PLA policy on all Alameda County projects and return to the Board for final action. Right now Contra Costa County, Solano County, and Santa Clara County have PLA policies for their construction projects. Orange County had one from 2000 to 2005.

City of Milpitas Imposes PLA on Another Local Project

The Public Works Director for the City of Milpitas sent a letter dated October 21 to the head of the Santa Clara & San Benito Counties Building and Construction Trades Council touting the alleged success of the PLA for the Milpitas City Library project and advocating for a PLA for the city’s

proposed Senior Center. On December 16, the Milpitas City Council unanimously approved a PLA for this project. In 2006, the Milpitas City Council had voted 4-1 to approve the PLA for the library and its associated parking garage. The one opponent of the PLA was Mayor José Esteves, who retired and was replaced in the November 2008 election by a pro-union member.

Mt. Diablo Unified School District Approves PLA for a Few Projects

On February 12, the board of trustees for the Mt. Diablo Unified School District voted 4-1 to require contractors to sign a PLA for construction of four to nine classrooms and the installation of new heating, ventilation, and air conditioning systems at certain district schools. At least one ABC member had been planning to bid on this work, so competition has been cut. Nicole Goehring of the ABC Golden Gate Chapter spoke out against the PLA. No one from the unions felt the need to attend the meeting.

U.S. District Court Rejects Lawsuit Challenging Community College PLA

In June 2004, seven apprentices in ABC training programs filed a lawsuit (*Matt Johnson et al. v. Rancho Santiago Community College District et al.*) against local unions and the Rancho Santiago Community College District in Orange County contending that the PLA approved by the college board of trustees in 2003 discriminated against them. After waiting for the June 2008 resolution of the *U.S. Chamber of Commerce v. Lockyer (Brown)* case, a U.S. District Court judge ruled against the ABC apprentices.

In his October 24 decision, Judge James Selna ruled that the PLA for the college district was sufficiently “narrow” in its project coverage to be legal, even though the plaintiffs argued that the PLA circumvented the U.S. Supreme Court’s *Boston Harbor* decision by applying to multiple projects, many of which had not been identified, scheduled, or designed at the time the PLA was approved. (The *Boston Harbor* decision in 1993 allowed local governments to sign PLAs as a “market participant” under certain limited circumstances.) The judge also ruled that a private party could enter into a PLA and that the PLA was not illegal even if the college district required contractors to sign the PLA for federally-funded work, in violation of President Bush’s executive order prohibiting PLAs on federally-funded projects. The plaintiffs have appealed the case to the 9th Circuit U.S. Court of Appeals. In the meantime, the PLA for Rancho Santiago Community College District expired in May 2008.

Appeals Court Upholds Ruling that Legislature Can Require Union Workers

The Zumbun Law Firm failed in an effort backed by ABC of California to bring some accountability to a state legislature that exempts itself from laws that every local government and state agency must follow. On August 19, the 3rd appellate court for the State of California affirmed a Sacramento County Superior Court judge’s decision from 2006 that the California State Legislature could bid the Capitol Security Fence construction project with an “all union workforce” requirement for contractors. The appeals court also agreed with the lower court judge that the refusal of the legislature to provide records concerning the decision to include this requirement in bid documents did not violate the state’s Legislative Open Records Act. The California Supreme Court denied a motion to appeal the case.

Ballot Initiative in Chula Vista to Ensure Fair and Open Competition Remains Elusive

In January, a group called Chula Vista Citizens for Jobs and Fair Competition filed paperwork with the City of Chula Vista to circulate a petition for an “Open Competition and Anti-Discrimination in Contracting” as a local ballot initiative. The group submitted 15,222 signatures to the Chula Vista City Clerk – more than enough to qualify a voter initiative on the November 4 ballot to prohibit PLAs on city-funded construction projects. Unfortunately, the organization made a technical mistake by late-filing a proof of publication. This allowed the State Building and Construction Trades Council to ask a San Diego County Superior Court judge to declare the signatures invalid. The trial judge ruled that the late filing was incomplete notice to potential opponents about the initiative and invalidated the signatures gathered between the due date for filing (February 25) and the late filing date (May 1). The City of Chula Vista determined that there were not a sufficient number of remaining valid signatures to qualify the measure.

Chula Vista Citizens for Jobs and Fair Competition then filed a new proposition with the Chula Vista City Clerk in August for another open competition and anti-discrimination contracting ordinance in that city. This time they collected more than 22,000 signatures in much less time. Obviously voter demand for the initiative is significant. Yet once again the supporters of fair and open competition were dealt a blow, as the Chula Vista City Clerk managed to find a technical reason to reject these signatures too.

Yet Another San Jose Area Community College Considers a PLA

A West Valley-Mission Community College District board member placed an item on the board’s November 6 agenda for the district to negotiate with the Santa Clara & San Benito Counties Building and Construction Trades Council for a PLA on future construction funded by the \$235 million bond Measure H, approved by voters in November 2004. Local ABC members and an ABC representative attended the meeting and spoke in opposition to the PLA. Also in attendance were local construction union officials eager to add this community college district to the two San Jose area community college districts that already require contractors to sign PLAs (San Jose-Evergreen and Foothill-DeAnza). No action was taken at the meeting. ABC will fight this PLA. Almost every community college district in the San Francisco Bay Area now requires its contractors to sign PLAs, and the last few holdouts are in danger.

John Swett Unified School District Considers PLA, One Day After Bond Passes

In 2002, ABC worked successfully to derail a PLA threat for a new school at the John Swett Unified School District in Crockett (Contra Costa County). Now the unions are back. Voters approved the \$20 million bond Measure A on November 4, and on November 5 the school board considered a PLA for construction funded by it. No action was taken at the meeting, but the board is expected to take action in 2009. ABC will oppose the PLA.

Unions Pressure City of Santa Paula to Sign PLA for Wastewater Treatment Plant

Union officials and legions of union workers showed up at meetings of the Santa Paula City Council complaining that the Arizona-based private operator for a \$58 million city water recycling facility is building the plant with contractors from Utah and Arizona that employ out-of-area workers. Unions demanded that the city require contractors to sign a PLA. The city council formed an ad hoc oversight committee to consider the issue of local employment for the project. To maximize the pressure, unions picketed the job site and filed a lawsuit in Ventura County Superior Court alleging labor law violations by the contractors.

PREVAILING WAGE

Unions Appeal Court Decision Allowing Charter City a Prevailing Wage Exemption

On April 8, the State Building and Construction Trades Council appealed a December 7, 2007 decision of a San Diego County Superior Court judge rejecting a legal challenge to the City of Vista's policy as a charter city of exempting its locally funded construction from state prevailing wage requirements. On August 8, ABC of California filed an amicus ("friend-of-the-court") brief with the 4th appellate court of the State of California in support of the City of Vista in the case. On November 14, a California Appeals Court heard oral arguments in the case and allowed the general counsel for ABC of California to participate in oral argument.

Amicus briefs in support of the union position were filed by the Northern California Basic Crafts Alliance (unions), six unionized construction associations, and Attorney General Jerry Brown. ABC of California was alone in its support for the City of Vista.

Fresno City Council Punts on Prevailing Wage Exemption for Local Projects

During the week of May 11, Fresno City Councilman Jerry Duncan proposed that Fresno exert its right as a charter city to exempt its locally-funded construction from state prevailing wage requirements. He placed an item on the Fresno City Council agenda to begin the process of repealing the city's prevailing wage ordinance as a way to save money for the city in a time of budget trouble. ABC representatives worked to round up local support for the measure. On May 20, the Fresno City Council considered the proposal. ABC representatives spoke in support of it as well as representatives for the Fresno Chamber of Commerce and the Fresno Building Industry Association (BIA) of Fresno and Madera Counties. In the end, no one on the city council seconded Duncan's motion, and it died, to the jubilation of what the Fresno Bee called "a council chamber full of angry union members."

Irvine City Council Imposes Prevailing Wage on Great Park Construction

Union officials showed up at the June 24 Irvine City Council meeting to support a proposal that would require contractors for all projects at the Orange County Great Park to pay state prevailing

wages to workers. City staff estimated that the policy would add 10 to 20 percent to construction labor costs, thus increasing costs to Irvine taxpayers from \$4 to \$8 million. The City of Irvine is a charter city that exempts its locally-funded construction from state prevailing wage mandates.

On July 22, the Irvine City Council voted 3 to 2 in front of dozens of union officials to require contractors on the Orange County Great Park to pay prevailing wage to their workers. A representative for the ABC Southern California Chapter spoke out against the proposal at two city council meetings. The Irvine Chamber of Commerce also opposed the proposal.

City of Palo Alto Considers Ending Charter City Exemption from Prevailing Wage

Construction unions lobbied the Palo Alto City Council in 2008 to stop using its charter city authority to exempt locally-funded construction from state prevailing wage requirements. On December 9, the Palo Alto City Council's four-member Policy and Services Committee considered a proposal to require their contractors on city-funded construction projects to pay prevailing wages to their workers. Palo Alto is one of only two charter cities in the San Francisco Bay Area that exempt any kind of city construction from prevailing wage (Mountain View is the other one) and the only city in the Bay Area to exempt ALL of its construction from prevailing wage. Going against the obvious will of the city council, a staff report presented a strong fiscal position against imposing prevailing wage and recommended against it.

ABC representatives spoke in support of maintaining the exemption, while the unions' main speaker was a professor known as the nation's pre-eminent economist in support of prevailing wage laws. In the end, the final decision of the committee was to direct staff to develop a policy for exempting certain construction from prevailing wage. The city's Capital Improvement Projects will absolutely be covered by prevailing wage. As the year ended, ABC was warning private developers and community groups that they need to inform the council and staff about how prevailing wage requirements will hinder their plans for construction.

Buena Park City Council Retains Prevailing Wage in New City Charter

In 2008, construction unions were much more intense in their mobilization to prevent charter cities from exempting local construction from state-mandated prevailing wage requirements, even as the State Building and Construction Trades Council pursued a lawsuit against the City of Vista to kill this right of charter cities altogether. According to union web newsletters, more than 500 union workers showed up at the May 12 meeting of the Buena Park City Council's Charter City Exploratory Committee and the May 27 city council meeting to browbeat city council members into upholding prevailing wages in the city. A top union official was quoted as saying, "This is not only about Buena Park; this is a virus certain interests want to spread all across the state. They are trying to undermine prevailing wages city by city." (Those "certain interests," of course, are Associated Builders and Contractors.)

The city council then "reversed course" and voted unanimously to preserve prevailing wage as a charter city. Buena Park citizens voted to become a charter city on November 4, but without an important way to exempt the city from costly state mandates.

Santee City Council Establishes Prevailing Wage in Proposed City Charter

Construction unions managed to weaken – but not eliminate – the potential ability of the City of Santee as a charter city to exempt its locally-funded construction from state-mandated prevailing wage requirements. In this case, union officials sought and won appointments to the Charter Advisory Committee set up by the city council to develop a proposed charter, and in that forum made their case in support of prevailing wage. The charter that was approved by Santee voters on November 4 required the payment of prevailing wages on City public works projects in the same manner as is required of general law cities in the State of California; provided, however, that the City Council may, by a resolution or ordinance adopted by a four-fifths (4/5) vote of the City Council, increase or decrease the minimum thresholds which trigger the requirement to pay prevailing wages for individual projects, categories of projects or all City public works projects.

ABC Challenges Union Attempt to Set Prevailing Wage for Off-the-Site Hauling

On January 6, 2005, the California Department of Industrial Relations Acting Director John Rea issued three prevailing wage coverage determinations ruling that the hauling of material and equipment to and from jobsites by trucking subcontractors and independent trucking contractors is covered by state prevailing wage law. This coverage went far beyond the federal Davis-Bacon Act and brought great joy to the State Building and Construction Trades Council.

In the spring of 2005, the DIR issued a stay in enforcement of the new on-site/off-site hauling prevailing wage determinations for subcontractors and independent contractors until the Division of Labor Statistics and Research develops a wage rate. Since then there have been administrative appeals, additional DIR determinations, and court decisions related to coverage. In November 2008, the California Department of Industrial Relations conducted hearings to figure out how to determine these prevailing wage rates.

ABC's general counsel spoke on behalf of ABC of California at one hearing and questioned claims from the Teamsters union that its collective bargaining agreements should be the basis to determine prevailing wages for off-the-site hauling. Subsequently, ABC of California submitted a five-page letter to the DIR pointing out how the agency should properly determine prevailing wage rates for off-the-site hauling (to and from a construction site). Among other statements, ABC argued that the Teamsters Master Construction Agreements are completely irrelevant to prevailing wage determinations for off-the-site hauling and should be ignored.

DIR Director Finds Prevailing Wage is Required for Certain Off-Site Fabrication

In March 2003, Governor Gray Davis' Acting Director of the Department of Industrial Relations (DIR) Chuck Cake (a former IBEW official) used two prevailing wage coverage determinations to expand prevailing wage coverage to off-site fabrication. After an outcry from business groups throughout California, the DIR suspended the determinations. Ultimately the recall happened and the Schwarzenegger Administration permanently withdrew the determinations in May 2004.

This was not the end of the matter. DIR Director John Duncan issued a determination dated November 13, 2008 that a specific contractor, Russ Will Mechanical, should have paid prevailing wages

to its workers who fabricated HVAC parts in the company's permanent off-site fabrication shop for a specific public works project. ABC of California had submitted a letter to DIR in June 2007 urging the Director not to require prevailing wage for such work, and ABC of California also skirmished with the DIR over an unsuccessful request for public documents that might reveal a union role in the case.

In 2007, the DIR announced that its opinions about prevailing wage coverage for specific projects would no longer be precedential. Nevertheless, ABC warned its members to read the decision and consider whether or not the conditions under which a company performs off-site fabrication work are similar to the conditions of the off-site fabrication work done by Russ Will Mechanical. In the meantime, Russ Will Mechanical is appealing the decision with the financial support of ABC members, and ABC of California is filing comments in support of the appeal.

DIR Director Declares Rent Credit Makes Private Hotel a Public Works Project

The Director of the Department of Industrial Relations (DIR), John Duncan, issued a determination on April 1 requiring contractors to pay their employees the state prevailing wage for work on a Hilton convention hotel project at the Port of San Diego. This decision was contrary to an argument ABC of California submitted to the DIR Director on November 30, 2007 as an interested party. AGC of California also submitted a letter arguing that the hotel was not a public works project.

The project is a 30-story, 1190-room hotel estimated to cost about \$350 million to build. It is being built exclusively with private funding and will be privately owned and managed. Construction began in December 2006, and the general contractor is an ABC member, Hensel-Phelps.

The Port of San Diego amortized \$26.5 million in up-front rent credits (resulting in a \$46.5 million rent credit) for the hotel. The Carpenters Union asked the DIR to declare the project as “public works” under Labor Code 1720 because of the rent credit, thus forcing the general contractor and subcontractors to pay workers the inflated prevailing wage. The DIR Director agreed that the rent credit made the project a public work.

Hensel Phelps has appealed the decision, and ABC of California filed an amicus brief.

Governor Vetoes Union-Backed Prevailing Wage Bill

As requested by ABC of California, Governor Schwarzenegger vetoed Assembly Bill 2002, a bill sponsored by the State Building and Construction Trades Council and the Los Angeles Unified School District that would have made general contractors liable for prevailing wage violations of subcontractors and increased penalties for prevailing wage violations. In his veto message, the Governor wrote the following: “While I strongly support efforts to ensure compliance with our prevailing wage laws, the proponents of this measure have failed to demonstrate a need for the increased penalties or evidence that simply doubling penalties and creating new liabilities is an effective way of achieving greater compliance. Strong enforcement of existing laws, as well as concerted public outreach and education of employers, will do far more to ensure compliance with our laws than simply indiscriminately doubling penalties.”

APPRENTICESHIP

Apprenticeship Committee Discusses But Does Not Reform Restrictive Section 208 Regulation

The California Division of Apprenticeship Standards' Blue Ribbon Committee on Expanding Apprenticeship Opportunities met four times in 2008 to discuss ways to "expand apprenticeship opportunities." The main item considered by this committee was a possible change to Section 208 of the state's apprenticeship regulations, which requires apprentices working on private projects to be paid a percentage of the state's prevailing wage rates. The current regulation was implemented in 2002 and has discouraged contractors from using apprentices on private construction projects.

Over four meetings, the sharply divided committee accomplished little in advancing proposals to create more training opportunities for apprentices. At their September 30 meeting, the Blue Ribbon Committee on Apprenticeship Opportunities voted 3-2 against changes to Section 208. This meeting was a chaotic and uncontrolled "mob scene," with about 150 union activists overwhelming the room and trying to intimidate the Blue Ribbon Committee and the few people there who tried to speak in support of changing Section 208. ABC has now tried to change Section 208 through a court challenge and through the regulatory process, without success.

Governor Vetoes Bill Modifying Needs Test for Approval of Apprenticeship Programs

In 2008, various versions of a bill in the state legislature (Assembly Bill 734) would have repealed or modified the specific "needs test" language in the California Labor Code that the U.S. Department of Labor has demanded the state to repeal in order to end federal de-recognition. ABC was neutral on the final version of the bill, because a generalized needs test would have remained in state law. Governor Schwarzenegger vetoed it, noting that the failure to address the "needs test" would ensure that California's apprenticeship programs remain de-recognized by the U.S. Department of Labor.

Meanwhile, unions continued to use the needs test in California state law as a potent weapon to block competition in apprenticeship training. A San Francisco Superior Court judge sided with the Plumbers union and invalidated the CAC's approval of the expansion of the Plumbing-Heating-Cooling Contractors (PHCC) merit shop plumbing apprenticeship program into Kern County. The judge concluded that the CAC had not adequately shown that there was a need for apprenticeship training for plumbers in Kern County beyond what was already offered by the Plumbers union.

Regulation Expands Contractor Requests for Apprentices

The California Division of Apprenticeship Standards (DAS) implemented a new regulation stating that if an apprenticeship program does not dispatch enough apprentices to a contractor for it to attain the five-to-one journeymen to apprentice ratio on a public works project as required by state law, that contractor must request apprentices from all other programs until it reaches the state-mandated ratio. This has meant that some contractors affiliated with ABC programs may need to send requests for apprentices to union programs if ABC cannot provide enough apprentices, and likewise some union

contractors may need to request apprentices from ABC programs. ABC did not take a position on the regulation. At the end of 2008, ABC apprenticeship programs report that some unions are actually dispatching apprentices to ABC member companies.

ABC Hammers City of Long Beach on Apprenticeship Policy for Federal Work

The ABC Southern California Chapter has continued a relentless campaign to change a restrictive union-only plan for restitution of the City of Long Beach's non-compliance with "Section 3" in the construction of projects funded by the U.S. Department of Housing and Urban Development (HUD). The plan was implemented in 2005 by the City of Long Beach in response to a complaint from the Legal Aid Foundation of Los Angeles. It includes a construction training program that provides up to \$1500 for each participant referred into Union Building Trade apprenticeship programs for the purchase of tools, uniforms, and "other necessities."

In early 2007, the ABC Southern California Chapter sent a letter to the City of Long Beach and HUD asking for an amendment to the restitution plan to allow funding to be provided for each participant who is referred into any federally-approved apprenticeship program. Legal counsel for the ABC Southern California Chapter Merit Training Trust Fund repeated the demand to the city in a May 1, 2008 letter. The city then sent a letter to HUD asking to change the agreement.

The Legal Aid Foundation of Los Angeles objected to the change demanded by ABC. It claims that "We see no reason to now reconsider the City's commitments, and certainly no meritorious basis requiring the proposed modification." This group has advocated publicly in support of a PLA for all city projects in Long Beach.

SPRINKLER FITTER CERTIFICATION

Legislature Fails to Pass Union-Backed Bill Requiring Sprinkler Fitters to Be Certified

The California Division of Apprenticeship Standards (DAS) certifies electricians, and the California Division of Occupational Safety and Health (Cal-OSHA) certifies crane operators. A bill proposed in the state legislature (Assembly Bill 2288) would have required the State Fire Marshal to certify sprinkler fitters. Sprinkler fitters with more than 10,000 hours of experience would have to pass a test to get certified, while sprinkler fitters with less than 10,000 hours of experience would also have to complete a state-approved or federally-approved apprenticeship program to be eligible to take the test.

As of 2008, all state-approved fire sprinkler apprenticeship programs in the state are operated by only two organizations: the non-union California American Fire Sprinkler Association and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry union. ABC opposed this bill, and while it passed the Assembly, the bill failed to reach the Senate floor.

ELECTRICIAN TESTING AND CERTIFICATION

New Law Requires State to Enforce Electrician Certification Requirement

As requested by ABC of California, Governor Schwarzenegger signed into law Senate Bill 1362, sponsored by the Western Electrical Contractors Association (WECA), which required the California Division of Apprenticeship Standards (DAS) to enforce the state's electrician testing and certification program. The new law requires the DAS to develop a process for referring cases to the Contractors State License Board when it determines that a contractor has violated laws related to electrician certification. As of July 1, 2009, a contractor can be disciplined for not following the electrician certification law. ABC and WECA members were leaders in the state's electrical industry for getting their employees certified, and now the rest of the industry needs to conform to the law.

PUBLIC WORKS CERTIFICATION

Governor Vetoes Union-Backed Certification for Public Works

As requested by ABC of California, Governor Schwarzenegger vetoed Senate Bill 1698, a bill sponsored by the State Building and Construction Trades Council that would have established a public works certification for contractors to be controlled by the Contractors State License Board (CSLB). In his veto message, the Governor wrote the following: "I believe that sufficient safeguards are already in place to prevent contractors from bidding on public works projects if they fail to comply with current Labor Code provisions. This bill would create barriers to small business by adding additional requirements to become a qualified bidder on public works projects, while providing little additional value to the public works process. By creating this barrier, competition on public works projects could be reduced, that may result in increased bid and project costs."

DESIGN-BUILD

Discriminatory Provisions Enshrined in More Design-Build Authorizations for Local Governments

Despite requests from ABC of California for vetoes, Governor Schwarzenegger signed Senate Bill 1699, which authorizes design-build as an alternative bidding practice for health care districts, and Assembly Bill 642, which authorizes design-build as an alternative bidding practice for certain local governments. These bills regrettably do not address union-backed language to encourage PLAs and discriminate against contractors that request apprentices from newly-approved programs. The Governor supports design-build and has chosen to overlook the bad language that unions insist on including in design-build authorization bills.

Governor Schwarzenegger Eliminates State Funding for Labor Institute, But Program Is Saved with “Found Money”

On September 23, Governor Schwarzenegger line-item vetoed the \$5.4 million in the state budget that the legislature had included for the University of California Labor Institute. ABC of California let the Governor and other parties know this program deserved a veto.

This taxpayer-funded Labor Institute has worked on behalf of construction unions against ABC since its creation in 2000. For example, in February 2008 it released a phony “study” supporting a proposed PLA for the Los Angeles Community Redevelopment Agency immediately before the agency’s commissioners voted on negotiating it.

To the chagrin of ABC of California, the November 29 San Francisco Chronicle reported that the University of California president had “found \$4 million in the university budget to maintain the UC Miguel Contreras Labor Program on the two campuses for the current fiscal year, to June 30.” The article failed to enlighten readers where that money had been “found” when there is supposedly a budget crunch in the University of California system.

ELECTIONS

Early PLA Proponent in Contra Costa County is Recalled from Office

Pinole Councilwoman Maria Alegria - the instigator of the PLA for the Pinole City Hall in 1996 - was recalled by Pinole voters on February 5. Her replacement was a retired ABC member who was one of the plaintiffs in a lawsuit in Contra Costa County Superior Court that successfully threw out the PLA. Many unions (including construction unions) spent tens of thousands of dollars to try to preserve her in office, and the Democrat Party establishment in Contra Costa County organized behind her. A January 30 article in the Contra Costa Times indicated that only one organization financially supported the Roy Swearingen campaign and promoted the recall of Alegria – Associated Builders and Contractors. Besides making a Political Action Committee contribution to the Swearingen campaign, the ABC Golden Gate Chapter sent a mailer to Pinole voters highlighting Alegria’s support for the PLA and declaring that she should have been recalled twelve years ago.

BANNERING

ABC Puts Union-Only Developers on the Spot in San Diego

In 2008, the San Diego Chapter began a “bannering” campaign against corporations that in their bid specifications require their construction contractors to use union workers. The ABC banner says “Labor Dispute – Shame on [Name of Company] – Guilty of Discrimination – Excludes 85% of Local Carpenters.” The banner made its first appearance at a private developer’s job site starting on April 9. Two of the three initial targets of the banner campaign have assured the ABC San Diego Chapter that they do not have union-only requirements – a change in policy apparently resulting from the banner campaign.

UNION ACTIVITY

ABC Challenges Aggressive Union Picketing and Violence in Bakersfield

The Carpenters Union Local 1506, based in Los Angeles, spent 2008 continuing its aggressive “Shame On” picketing campaign against private businesses in Bakersfield that hire contractors that allegedly do not pay so-called “prevailing wages” to their workers. But the ABC Central California Chapter took the lead in the community in fighting back against the harassment.

The union campaign became violent on February 25, when that the facilities director for the Santa Barbara Business College campus in Bakersfield filed a police report alleging battery and assault by individuals associated with the union who walked on the job site. According to people working at the project, carpenters’ union officials had trespassed on the job site before, and the project had been picketed and vandalized.

On March 25, a local news TV program reported that picketers hired by the Carpenters Union were holding a noisy and disruptive protest at a heart center in Bakersfield. Police monitored the scene for several hours as elderly heart patients attempted to enter the building. On March 26, the same local news program reported that the ABC Central California Chapter was organizing businesses to fight back against the union picketing, starting with the filing of an unfair labor practice charge against the union with the National Labor Relations Board (NLRB) related to the assault at the Bakersfield campus of Santa Barbara Business College.

The ABC Central California Chapter filed the complaint on April 17, and there was extensive local media coverage. After the chapter learned that the NLRB had investigated the trouble caused by the Carpenters Union’s “Shame On” campaign and discovered that the union was possibly violating earlier agreements not to disrupt people’s access to buildings, the chapter filed a second NLRB complaint.

APPOINTMENTS OF ABC LEADERS

Two ABC Members Appointed to State Boards

Jeff Olsen of Helix Electric was appointed as a representative of ABC of California to the Facilities Program Advisory Committee of the California Department of Corrections and Rehabilitation’s Facilities Planning, Construction & Management Program. And Andy Recalde of ABC Golden Gate Chapter member The Don Chapin Company, based in Salinas, was appointed to the California Air Resources Board’s Off-Road Implementation Advisory Group (ORIAG).