THE CONSTRUCTION USER
SPRING 2021
A Publication of The Association of Union Constructors www.tauc.org
ADVANCING UNION CONSTRUCTION AND MAINTENANCE

In·fra·struc·ture

noun

1. the basic physical and organizational structures and facilities (e.g. buildings, roads, power supplies) needed for the operation of a society or enterprise.

2. "the social and economic infrastructure of a country"

3. what union contractors do best

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THE ASSOCIATION OF UNION CONSTRUCTORS
1501 Lee Highway, Suite 202
Arlington, Va 22209
703.524.3336
703.524.3364 (Fax)
www.tauc.org

EXECUTIVE EDITOR
David Acord
703.628.5545
Dacord@Tauc.org

ADVERTISING REPRESENTATIVE
(Contact for rates and details)

Bill Spilman
Innovative Media Solutions
320 W. Chestnut St.
P.o. Box 399
Oneida, Il 61467
309.483.6467
Bill@Innovativemediasolutions.com

SUBSCRIPTIONS
For information about subscriptions, reprints, or purchasing bulk copies, contact:
Executive Editor, David Acord
703.628.5545
Dacord@Tauc.org

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IN EVERY CORNER

ASSOCIATION NEWS

Opportunities

BY STEVE JOHNSON, PRESIDENT, GEM, INC.

President Joe Biden recently unveiled a 10-year, $2 trillion infrastructure proposal known as the American Jobs Plan. The ambitious proposal adopts a broader definition of infrastructure — something TAUC has long advocated. Besides traditional infrastructure elements, such as roads, bridges and ports, the American Jobs Plan also focuses a great deal on upgrading the nation's energy grid and investing billions in new clean energy technologies, part of the administration's larger goal of achieving 100% carbon-free electricity by 2035 and net-zero emissions by 2050.

I am not here to talk politics. I know that the closures of coal-fired power plants over the past decade have hurt many TAUC members, and so for them, the idea of a "carbon-free" power grid may be a bitter pill to swallow. Too often, the argument over coal-fired plants was framed as fossil fuels on one side and clean energy on the other, like two opposing teams on a football field in a winner-take-all scenario. Everyone dug in their heels.

But even as environmentalists (and, at times, the federal government) seek to curb the use of coal as a power source, TAUC continues to advocate for an "all of the above" strategy to meet the nation's energy needs. While we fiercely defend the reliability and efficiency of coal-fired power, we also know that for our contractors to thrive, they need to embrace other types of energy production, too. For instance, my company — GEM, Inc. — has been involved in solar-field installation since 2008. We started with a small project in northwest Ohio (our home state) and over the years have completed installations in Michigan, Indiana, Illinois, New York and Arizona.

Regardless of whether you voted for the guy, I think it's important to look at the president's proposal through the eyes of a union contractor — in other words, as a businessperson, a construction professional, a leader who wants to expand their company and give employees new and better opportunities. What is in the plan that could help our industry grow? What new opportunities await us if we adopt an "all of the above" philosophy?

I don't intend to analyze the plan line by line, but I'd like to point out a few interesting and exciting ideas that could potentially benefit TAUC members' bottom lines. Of course, the proposal must still move through both houses of Congress, so who knows what the final version will look like, but we have to start somewhere!

Union Jobs

Biden has made it clear that his American Jobs Plan would have a strong focus on union labor. Many observers say they believe the final infrastructure bill passed by Congress would require all projects to use the prevailing-wage requirements in the Davis-Bacon Act, which would help union contractors remain competitive. The phrase "prevailing wage" is also used several times in the long fact sheet the White House released summarizing the proposal; it even states that one of the administration's goals is to "create good-quality jobs that pay prevailing wages in safe and healthy workplaces..."

And then there's the fact that Biden chose to formally announce his infrastructure plan at the United Brotherhood of Carpenters' training center in Pittsburgh. In his speech, the president said, "I'm a union guy. I support unions. Unions built the middle class. It's about time they start to get a piece of the action."

Electric Vehicles

Biden proposes spending a whopping $174 billion to increase the U.S. market share of plug-in electric vehicles (EVs), which is roughly one-third the size of China's. The plan would "enable automakers to spur domestic supply chains from raw materials to parts, retool factories to compete globally, and support American workers to make batteries and EVs," the White House noted. Other EV-related proposals include:

- Give consumers rebates and tax incentives to buy American-made EVs "while ensuring that these vehicles are affordable for all families and manufactured by workers with good jobs."
- Establish grants and incentive programs for states, local governments and the private sector to build 50,000 EV chargers across the country by 2030 "while promoting strong labor, training and installation standards."

Given union contractors' strong presence in the auto industry and our decades of experience helping major manufacturers expand and retool their factories, we are in a great position to help the country transition into a new era of electric vehicles.

Power and Industrial Infrastructure

As I mentioned earlier, the American Jobs Plan expands the definition of infrastructure to include our energy and utility sector, with an emphasis on creating jobs by "modernizing power generation and delivering clean electricity." Areas of interest to TAUC contractors include:

- A 10-year extension and phase down of an expanded direct-pay investment tax credit and production tax credit for clean energy generation and storage.
- Clean energy block grants.
- Creation of an Energy Efficiency and Clean Electricity Standard (EECES) aimed at "cutting electricity bills and electricity pollution, increasing competition in the market, incentivizing more efficient use of existing infrastructure, and continuing to leverage the carbon pollution-free energy provided by existing sources like nuclear and hydropower."
- Remediation and redevelopment of thousands of idled former industrial and energy sites.
- Department of Energy retooling grants for idled factories through the Section 132 program.

Carbon Capture and Storage

Carbon capture and storage (CCS) has come a long way in a short time. In 2012, when the Obama-era EPA suggested that coal-fired power plants could meet its strict new carbon pollution requirements by pumping CO2 emissions underground, many in our industry — including TAUC — objected. CCS technology was too new and untested, we argued. But what a difference a few years make! Researchers have made huge advances, and CCS is now viewed as a real and practical solution to lowering emissions — as well as a potential new line of business for union contractors with experience in the energy sector.

The president's infrastructure plan contains several important CCS provisions, including:

- Reforms and expands the Section 45Q tax credit, "making it direct pay and easier to use for hard-to-decarbonize industrial applications, direct air capture, and retrofits of existing power plants." This would "accelerate responsible carbon capture deployment and ensure permanent storage," the White House said.
- Supports large-scale sequestration efforts.
- Establishes 10 pioneer facilities that demonstrate carbon capture retrofits for large steel, cement and chemical production facilities.
- Invests $15 billion in demonstration projects for climate R&D priorities, including utility-scale energy storage and CCS.

A more detailed picture of the infrastructure plan will emerge as Congress starts its work in earnest later this year. But for now, after enduring one of the toughest years in history, I think it's OK for union contractors to engage in a little cautious optimism. One of the benefits of adopting an "all of the above" strategy is that it gives us many potential avenues for new business. TAUC members stand poised to play an important role in ensuring that clean energy, in all its various forms, will help lead our country into a new era of reliable and effective power generation. ■

It's important to look at the president's American Jobs Plan through the eyes of a union contractor who wants to expand their company and give employees new and better opportunities.

A NEW **LANDSCAPE**

BY DANIEL HOGAN, TAUC CEO

Another spring has arrived, and along with warmer weather, there are also several promising signs that our country — and the construction industry — is finally ready to emerge from a year of lockdowns and uncertainty. Although we can't declare victory over COVID-19 just yet, it's clear we have turned a corner. As I write this article in early April, nearly 20% of the U.S. population has been fully vaccinated, and millions more are receiving doses each day.

In my daily discussions with contractors, building trades officials and owner-clients, I don't hear a lot of talk about "getting back to normal." Across the board, executives realize there's no going back to the pre-COVID-19 era. The landscape has permanently changed, and the old maps have been thrown out. Pretty much everyone is focused on the new normal and blazing new trails. Our job in 2021 and beyond is simple, but by no means easy: we must figure out how to not just survive, but thrive in the coming post-pandemic business era.

SHIFTING **GEARS**

This will be a year of major transition, both for TAUC and the union construction and maintenance industry. On the home front, as most of you know, TAUC and NMAPC's longtime leader, Steve Lindauer, retired earlier this year after more than 30 years of service to both organizations. I am honored to follow in his footsteps as CEO of TAUC as well as Impartial Secretary and CEO of NMAPC.

Many people have asked me about my plans and what I want to change. But one of the most important lessons I learned from Steve is that the success of TAUC and NMAPC hinges on leadership's ability to adhere to a set of core principles established when both organizations were created in 1969 and 1971, respectively. These nonnegotiable principles define our character. They include an overarching commitment to jobsite safety and the well-being of every contractor and craftworker; dedication to tripartite cooperation among contractors, labor and owner-clients; and an unswerving belief in the power of open, honest dialogue and mutual respect.

Additionally, TAUC's Executive Committee recently identified four "strategic pillars" that define our purpose and mission as a trade association and guide our decision-making:

- Health and Safety
- Government Affairs
- Industrial Relations
- Innovation and Tech

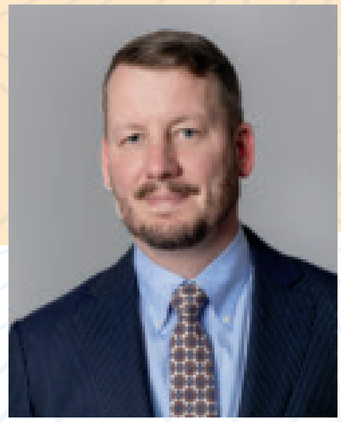
As a new leader, one of the most important things I can do is reaffirm my commitment to all these principles. They have served us well for more than 50 years, and it would be foolish to turn away from them now; that would be like moving into a beautiful new house and then starting to chip away at the foundation with a sledgehammer. We will meet the challenges of the future without discarding the lessons of the past. Our long-standing traditions are what will enable us to succeed in an increasingly uncertain world where technology is poised to disrupt nearly every aspect of our industry.

What will change, of course, is how we respond to these disruptions. Each CEO of TAUC has had to adjust strategy and tactics when circumstances changed. We are a member-driven organization, and feedback is incredibly important; in fact, it's our lifeblood. In the last few years of Steve's tenure, for instance, we began to devote much more time and resources to innovation/technology and government affairs. Why? Because it became clear from conversations with our member contractors that these were increasingly important priorities. I want to continue that practice. So, to put it bluntly, let us know what's on your mind.

TAUC is a unique organization. For us, "customer service" means not only assisting our member contractors and helping them achieve their business goals but also ensuring that their customers — the owner-clients — experience the absolute best that union construction and maintenance have to offer. We want every interaction between a union contractor and an owner-client to serve as a glowing advertisement for our industry. We know that we don't deserve a client's business; we must earn it every single time a project is put up for bid. Therefore, as CEO of TAUC, I intend to make customer service — in all its varying dimensions — a top priority.

I want to sincerely thank our members for their continued support of TAUC over the past year during this "mother of all stress tests."

Dan Hogan is the CEO of The Association of Union Constructors and also serves as Impartial Secretary and CEO of the National Maintenance Agreements Policy Committee, Inc. (NMAPC).



THE NEXT **NORMAL**

In a recent report, McKinsey & Company, the global consulting powerhouse, coined the phrase "the next normal" to describe the post-COVID-19 economy our members will need to learn to navigate. I like it because "next" reminds us that our world is constantly changing. Although hard to believe, someday — probably much sooner than we think — there will be a next "next normal" and the economy will again transform and evolve in ways we can't even begin to imagine.

As McKinsey noted in the report, "2021 will be the year of transition. Barring any unexpected catastrophes, individuals, businesses and society can start to look forward to shaping their futures rather than just grinding through the present. The next normal is going to be different. It will not mean going back to the conditions that prevailed in 2019."

As we all know, the pandemic forced nearly every industry to embrace new forms of technology to keep the country running. McKinsey argues that this has set the stage for nothing less than the dawn of a "Fourth Industrial Revolution." In other words, the future is here, and it's digital. "There's no going back," the report's authors wrote. "The great acceleration in the use of technology, digitization, and new forms of working is going to be sustained. Many executives reported that they moved 20 to 25 times faster than they thought possible on things like building supply-chain redundancies, improving data security, and increasing the use of advanced technologies in operations."

My own experiences bear this out. In speaking with executives from some of the largest contractors and manufacturing companies in the country, it's clear that the union construction and maintenance industry is on the verge of an explosive surge in productivity thanks to our embrace of new technologies such as robotics, artificial intelligence and machine learning. The pace of change is staggering and is only going to accelerate. And unlike previous generations, today's union contractors and their building trades partners aren't resisting that change. Just the opposite: for the first time, we are on the cutting edge, actually leading the innovation and technology revolution.

This year will also be defined by a major political transition: the beginning of a new presidential administration. Although Democrats have narrow margins in both the House and Senate, there is widespread optimism that Congress can push through some version of President Joe Biden's infrastructure proposal (for more information, see articles on Pages 12 and 14). As always, the devil will be in the details, but TAUC is pleased to see the Biden administration embrace an expanded definition of infrastructure, one that includes not only roads, bridges and ports, but also our nation's vital power grid and utility sector. For a deeper dive into the potential opportunities a new infrastructure plan could offer union contractors, I recommend TAUC President Steve Johnson's excellent article on Page 4.

LOOKING **AHEAD**

This past year challenged all of us in unexpected ways. Contractors were forced to dig deep and figure out a new path forward to ensure that our nation's energy and manufacturing infrastructure kept humming. I want to sincerely thank our members for their continued support of TAUC during this "mother of all stress tests" — and I especially want to single out our Governing and Local Employer Organizations (LEOs) that provided invaluable guidance and advice. We appreciate your patience, and I can't wait to thank you in person when we resume in-person meetings. Speaking of which — stay tuned. I hope to make an exciting announcement along those lines very soon.

In the meantime, the lines of communication are open. I am honored to begin the hard work of serving our members and helping to grow our industry. Stay safe, and we'll talk again soon. ■

The Choice Is Theirs — The Responsibility Is Ours

BY MARK BRESLIN

Mark Breslin is a strategist and author of several books, including most recently, The Five Minute Foreman: Mastering the People Side of Construction. *Visit his website at www.breslin.biz or contact him at 925-705-7662.*

In the next months, the industry will have an opportunity to put COVID-19 behind us both on and off the jobsite. This can be achieved by getting enough of our field workforce vaccinated to assure a safe and infection-free worksite. But we face a serious challenge. Recent reports indicate that only 54% of construction workers are willing to be vaccinated. This is the lowest number of any occupation in the U.S. except for farmworkers. This is a health and safety, economic, and risk management problem for every TAUC member company.

If we, as an industry, cannot generate more interest in vaccination, then our industry may end up being the last place where COVID-19 resides in the workplace. The first and most important thing is to protect our union workforce and their families. Also, as we have seen, the new laws, regulations and costs associated with prospective worker illness at a federal, state and local level have been overwhelming, as many have been rushed and poorly considered. If we do not want more of the same, it is time for action.

There appears to be a mistaken idea that this is a political issue rather than one of health and safety. As we know, that perception can lead to reactive responses and toxic interactions. But regardless, the issue must be dealt with, and many owner organizations are considering their own policies for their projects, including mandatory vaccination. Just like drug testing, owner mandates drive change, but we must do our part, too.

An industry campaign and website to support this effort have been developed for the union construction industry. The campaign is called "Roll Up Your Sleeves," and the website is **Vaccinateconstruction.com.** On this website, employers, unions, workers and owner organizations can find:

- Credible, factual information on vaccination in English and Spanish.
- Tailgate meeting information in English and Spanish.
- Direct links to major health organizations with credible data.
- Centers for Disease Control and Prevention and major university findings.
- And much more.

Vaccinations are a part of American life. We got them when we were kids, and almost all our children have had multiple vaccinations as part of attending school. But at this time, a lot of misinformation, political overtones and general uncertainty prevail. What our people do is their individual choice and should be respected. But if we as an industry do not proactively provide our people with good information for that choice, social media and other sources step in front of us. Our workforce certainly deserves better.

In closing, as I write this, I got my first shot yesterday (Pfizer). I am not celebrating it, but I look at it as the beginning of the end. We can encourage coming days of action for something that everyone will remember for a hundred years ahead. My ask, on behalf of the industry, is that we all finish strong and do what we can to promote health, save lives and move our great industry forward. ■

My ask, on behalf of the industry, is that we all finish strong and do what we can to promote health, save lives and move our great industry forward.


SONGER
SERVICES

SPOTLIGHT ON

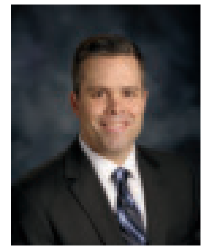
Government Affairs

The Infrastructure Agenda

Planes, Trains and Automobiles

BY JUSTIN BRUCE,
BRUCE & MERRILEES ELECTRIC COMPANY

Justin Bruce *is Chair of the TAUC Government Affairs Committee and Vice President of Bruce & Merrilees Electric Company.*



Yes, the headline for this issue's column is a reference to the 1987 movie starring John Candy and Steve Martin. Aside from being a comedy classic, it is also probably the first thing that comes to mind when most people hear the word "infrastructure." And while airports, highways and rail lines are vitally important, our electrical grid is also in dire need of maintenance and upgrades if we want to truly compete with China for dominance on the world stage. Thankfully, the Biden administration and Congress are turning their attention to this incredibly important endeavor now, and pressure is mounting for our politicians to finally pass a comprehensive infrastructure bill.

In 1998, the American Society of Civil Engineers (ASCE) released its first Infrastructure Report Card, grading the condition and performance of our nation's transportation and public service networks. Its most recent score, issued earlier this year, gave the U.S. an overall grade of C-. That is actually an improvement from the D+ we received in the last report card in 2017, but the price tag for fixing our aging infrastructure keeps going up as our elected officials continue to kick the can down the road. In 2017, ASCE estimated the price tag at a whopping $4.59 trillion, and in 2021, it skyrocketed to $5.937 trillion.

Meanwhile, as the government procrastinates, the private sector continues to innovate at a blistering pace. Elon Musk's The Boring Company is busy digging holes underneath the Las Vegas Strip; sometime soon, travelers will be able to hop into an autopiloted Tesla and be smoothly transported to the hotel or casino of their choice. And Virgin's Hyperloop recently unveiled its vision for intercity travel using vacuum tube technology at speeds of up to 670 miles per hour — it's projected to become a reality as soon as 2030.

We, as an industry, have the skills, vision and drive to make our country's infrastructure the envy of the world again, and TAUC member companies are eager to help make it happen. There was a real chance to get an infrastructure deal done during President Donald Trump's first year, but the private-public-partnership strategy has not produced the results that were anticipated. It is a complicated issue, no doubt. The federal government funds infrastructure but does not ultimately control what gets built. Those decisions are made at the state and local level, and the amount of coordination and communication required to get a meaningful infrastructure package across the goal line is immense.

TAUC's Government Affairs team is working with a variety of coalitions, from the U.S. Chamber of Commerce to our partners in the Construction Employers of America, to keep the pressure on Congress and the administration to get an infrastructure deal done and not simply pass another continuing resolution on the federal highway reauthorization bill. Current funding runs out in September, so something has to happen before then. And we hear that House Transportation and Infrastructure Committee Chairman Peter DeFazio, D-Ore., will have a broad infrastructure package voted on in the House this spring (see our exclusive interview with DeFazio on Page 14). That is when the real drama begins in the Senate, where it remains to be seen if the package will have enough bipartisan support to pass with the needed 60 votes or if Democrats will use reconciliation to get something done with a simple majority. Regardless of those political maneuverings, the good thing for TAUC members is that it looks as though Congress finally has the willingness and ability to get something done.

As an electrical contractor, Bruce and Merrilees stands ready to help, especially as it relates to the aging electrical grid and helping our customers transition to new renewable fuel sources. Many of our customers have indicated their interest in making massive investments in solar, wind and geothermal energy. The government could greatly assist in this by incorporating the right mix of incentives for companies to invest more heavily in renewables, like what it has done for the oil and gas industry over the last century. Vermont currently produces more renewable energy than its population can use, but the aging grid does not allow it to redistribute to neighboring states. These are the types of things our member contractors can help with, and it would benefit the country.

Last, I want to mention TAUC's political action committee, TAUCPAC, which we created to help elect individuals who share our members' concerns. We do not care about a politician's party affiliation; we only care about his or her ability to get things done that will benefit the union construction and maintenance industry. To learn more, check out **www.taucpac.org**.

Have a great spring... ■

Reality Bites: The Truth About Infrastructure Spending

BY JIM KOLB, PARTNER
SUMMIT STRATEGIES GOVERNMENT AFFAIRS, LLC

"Infrastructure week" has been a running punchline in Washington and on late-night television for the past four years. But as someone involved in the development of previous infrastructure legislation — both as a senior staffer on the House committee responsible for developing federal surface transportation policy and, later, as an advocate for organizations deeply involved in highway and transit construction — I can tell you that this problem has been going on much longer than four years. Congress has consistently missed deadlines to complete long-term surface-transportation reauthorizations, and the federal gasoline tax — the primary source of investments in surface transportation projects — has not been increased since 1993. Over this 28-year period, the purchasing power of the current gasoline tax has declined nearly 50%.

This highlights the challenge facing federal policymakers. Members of Congress love the idea of investing in infrastructure, but few have been willing to stand up and do the hard part: identify and vote for the revenue necessary to pay for that investment. So every new administration and Congress make infrastructure a top priority when they take office, yet the nation continues to tread water at best in maintaining — let alone improving — the condition of our infrastructure. Talking about infrastructure is easy. Taking the tough vote to raise the revenue to pay for it is hard.

Rough Roads Ahead

The lack of political will to deal with this situation is evident in the condition of all segments of the nation's infrastructure. As Justin Bruce, Chair of the TAUC Government Affairs Committee, points out in his article on Page 11, the American Society of Civil Engineers recently gave the nation's infrastructure a mediocre C- grade overall. The Highway Trust Fund (HTF), which is the source of funding for the largest federal infrastructure programs (highways and public transportation), remains underfunded. Since 2008, over $153 billion in federal general fund revenue has been transferred to the HTF to make up for the decline in revenue and to maintain the already inadequate investment levels. This move away from the user-pay system of financing highway and transit investment threatens to make these programs just another government funding program subject to the annual budget process and deficit-reduction politics.

The HTF is projected to be insolvent again in the summer of 2022. At that point, revenue to the HTF must be increased or federal investment in highway, bridges and public transportation will have to be reduced. That would, of course, significantly affect states and local governments, as well as construction contractors and the men and women who work on these projects.

There are many theories about the causes of the ongoing underinvestment in this critical component of the nation's overall economic well-being and quality of life. Some claim that the HTF program lacks focus since the completion of the interstate highway system. Others have an ideological desire to "devolve" the program back to the states, but on the opposite side of the fence are those seeking to *limit* state control over investment decisions. There are concerns that the requirements on projects built with federal funds are overly burdensome, counterproductive and increase the costs of projects. Observers have also pointed to a particularly cold political calculus: because members of Congress can't add specific earmarks to HTF spending and show their constituents they're bringing home the bacon, there is little incentive for them to risk the wrath of those same voters by supporting plans to raise taxes and fees to pay for new infrastructure projects.

"Talking about infrastructure is easy. Taking the tough vote to raise the revenue to pay for it is hard."

Jim Kolb is a partner with Summit Strategies Government Affairs LLC

A New Path — Or More of the Same?

Regardless of the underlying reasons for decades of underfunding, the Biden administration and leaders of the 117th Congress have once again made infrastructure a top priority. Whether this time will be different remains to be seen, but there are some signs of hope. This was highlighted by the fact that two of his early Oval Office meetings were with the bipartisan leaders from both the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee.

During the campaign, Biden called for spending at least $4 trillion over 10 years on “infrastructure and strategic industries such as semiconductors, renewable energy and electric vehicles.” We anticipate that his plans will become clearer with the release of the administration’s fiscal 2022 budget, which is expected to contain both his Build Back Better recovery plan and a broad outline of a surface transportation reauthorization proposal.

Nevertheless, despite the initial enthusiasm, a lot of familiar sticking points remain. Chief among these is how to pay for the increased investment, particularly after Congress has recently enacted nearly $5 trillion in spending to deal with the COVID-19 public health emergency. President Joe Biden’s commitment to not raise taxes on people making less than $400,000 would seem to take a gasoline tax increase (something Republicans oppose) off the table. Democrats have raised the possibility of reversing some of the corporate tax cuts contained in the 2017 Trump tax bill to pay for the infrastructure package. This is a total non-starter with Republicans. Senate Minority Leader Mitch McConnell recently stated that he saw no chance of Republicans backing any tax increases to pay for Biden’s infrastructure plan.

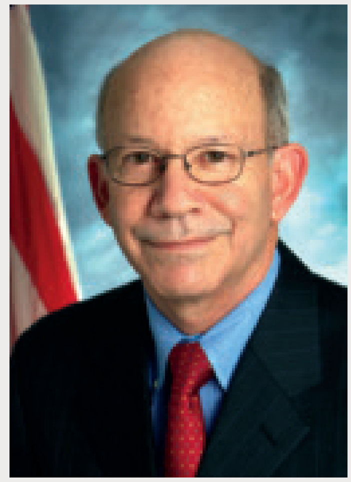
Republican opposition may force the Democrat majorities to go it alone and attempt to pass an infrastructure bill through a special budget process known as reconciliation. This procedure would allow the Senate to consider the legislation without the threat of a filibuster to delay or block the passage of the package. This partisan procedural route is no slam dunk. It is complicated by the fact that moderates in the Senate have not embraced using budget reconciliation to force through a bill that does not have bipartisan support or incorporates elements of the so-called Green New Deal.

The current federal transportation funding bill, the FAST Act, is set to expire on Sept. 30, which will undoubtedly spur legislative activity. Both the House and Senate committees with primary jurisdiction over federal infrastructure plan to take the first steps toward advancing legislation through committee in late spring or early summer. With this legislation beginning to move forward in committee, congressional leaders will be forced to decide if they want to try to go big on infrastructure or once again punt by passing another extension of the current law.

The Last Word

A lot of people in Washington like to say that infrastructure is a nonpartisan issue and that “there are no Democrat bridges or Republican roads.” Past leaders, such as former Presidents Dwight Eisenhower and Ronald Reagan, saw infrastructure investment as, essentially, an investment in America as a whole. Unfortunately, that attitude has broken down in recent years, and infrastructure has become just another partisan issue caught up in tax-and-spend politics and fights over environmental policy. Still, there is always a chance to implement real and lasting change. TAUC and our partners in the union construction and maintenance industry will continue to fight for that change throughout 2021 and beyond. ■

EXCLUSIVE: Talking Infrastructure with Rep. Pete DeFazio



The Construction User recently sat down with Rep. Pete DeFazio, D-Ore., Chair of the House Transportation and Infrastructure Committee, to discuss his plans for a new infrastructure package, how COVID-19 has impacted legislative priorities, and more.

THE CONSTRUCTION USER: During a recent White House meeting with House Democratic leaders on the "American Rescue Plan," President Biden said that he "can hardly wait to sit down with Peter DeFazio to work on infrastructure." As the nation's largest multi-craft union contractor association in America, that is music to the ears of TAUC members. Do you see infrastructure investment as the centerpiece of COVID recovery efforts? What are your "must-haves" on a new infrastructure package this session?

DEFAZIO: The first priority for the new Congress and the Biden administration was always to deal with the COVID-19 pandemic. First up, the immediate needs: crushing the virus and helping the millions of Americans who are out of work and struggling to make ends meet. My Committee has played an active role in each of the COVID relief packages.

Next, we have to turn quickly to the long-term economic recovery, which is best done with bold, transformational investment in our Nation's infrastructure that moves us out of the Eisenhower era and creates millions of good-paying jobs, supports U.S. manufacturing, and harnesses American engineering and ingenuity.

Among my must-haves for an infrastructure package is making sure that we rebuild our systems with American labor and American-made materials. We do that by closing Buy America loopholes that have previously allowed materials to come from outside the U.S. and ensuring we're putting that investment right back into our communities. I believe in this strongly, which is why in the last Congress, my infrastructure bill included some of the strongest Buy America provisions ever passed in the U.S. House of Representatives. I will make sure our new legislation does that and more. Creating good American jobs is key.

TCU: Your comprehensive transportation and infrastructure legislation was the cornerstone of the "Moving Forward Act," which the House passed last July. As the House gets to work on a new infrastructure package, do you see the Moving Forward Act as a starting point for the House proposal? How do you see the surface transportation reauthorization fitting into a larger infrastructure package? Are there specific elements of your legislation that you believe are critical to the final package that is signed into law?

DEFAZIO: The stars have finally aligned for Congress to work with the Biden White House to pass a transformative infrastructure bill that not only moves our crumbling infrastructure out of the Eisenhower era, but also gives us the tools we need to create millions of good-paying jobs to put our country on a path toward zero pollution. My surface transportation reauthorization legislation — the INVEST in America Act — that passed the House last year as part of the Moving Forward Act takes this approach. The Moving Forward Act also included provisions to help develop an electric vehicle charging network and publicly accessible electric vehicle charging infrastructure in underserved communities. This is the kind of transformational legislation that I plan to move through this Congress and get signed into law.

TCU: How do you see the COVID-19 pandemic impacting the creation of an infrastructure package? Are there new priorities or areas of importance that you would like to see emphasized as Congress deals with the response and recovery from the public health emergency?

DEFAZIO: Investing in our infrastructure and transportation systems — and the men and women who build them and keep them running — will be essential to our long-term economic recovery when we finally turn the corner on COVID-19. To build back better from the pandemic, and from decades of underinvestment at the Federal level, we must invest in infrastructure that's smarter, safer, greener, and built to last, which will create millions of good-paying jobs. It's also vital that we do so with American workers and American-made materials.

TCU: Many areas of the country have recently endured bouts of extreme weather (Texas winter storms, wildfires in California/Oregon, etc.). How can an infrastructure package address these issues and help states better prepare for extreme weather events in the future?

DEFAZIO: The extreme weather we've seen across the U.S. in recent years is the latest reminder that we must invest in infrastructure that is resilient to our changing

"Next, we have to turn quickly to the long-term economic recovery, which is best done with bold, transformational investment in our Nation's infrastructure..."

climate. That means rehabbing roads and bridges to withstand rising sea levels or increasingly frequent and severe storms. That also includes modernizing our drinking water and wastewater systems to be more efficient and capable of meeting demand. The same idea applies to our power grid. The bottom line is that there is a massive amount of work that could be done just to make sure our infrastructure meets today's needs, let alone the needs of our country 10, 20, 50 years into the future.

TCU: Many of TAUC's member contractors work in the energy sector, performing crucial upgrades and maintenance work on power plants and substations across the country. We believe these energy sources, and the power grid in general, are just as vital to our nation's infrastructure as roads, rails, bridges, and aviation. In your view, how should a new infrastructure bill address the power grid and the nation's energy needs?

DEFAZIO: I work closely with Frank Pallone, who chairs the Energy and Commerce Committee, because his work is inextricably linked to what I'm trying to get done in my Committee. The Moving Forward Act included $70 billion in investments for the electric grid, which not only could upgrade this critical utility but also put a lot of people to work doing so. As a country, we need to strengthen existing infrastructure, invest in weatherization, and accommodate more renewable energy. These are exactly the kind of investments that make our communities safer and better equipped for the future, while spurring economic activity and creating jobs.

TCU: We appreciate your strong support for inclusion of Davis-Bacon and labor standards in Federal infrastructure legislation in the past. Do you see strong prevailing-wage and labor protections being included in all elements of the infrastructure package — particularly the financing and tax-related elements designed to leverage and incentivize investments to modernize and upgrade the nation's infrastructure?

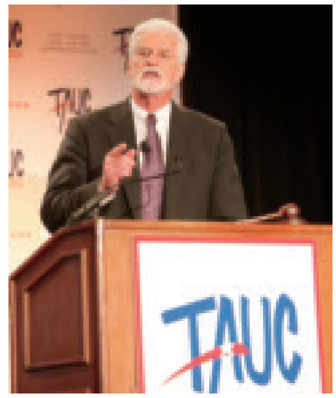
DEFAZIO: Yes, I am a strong supporter of labor protections because we need to do everything possible to support the very men and women whose work drives our economy. I included language across the board in the INVEST in America Act to ensure that every Federal dollar that goes out under programs included in that bill are covered by Davis-Bacon. That includes financing programs like Railroad Rehabilitation and Improvement Financing (RRIF) and the Transportation Infrastructure Finance and Innovation Act (TIFIA). By investing in workers and their families, we can create good-paying jobs and move our infrastructure into the modern era at the same time.

TCU: President Biden has said that battling climate change is one of his top priorities, and that hundreds of thousands of new and good-paying jobs can be created in the process. What kinds of job and business opportunities can our members — union industrial construction and maintenance contractors working for customers in the automotive, chemical, petrochemical and natural gas, steel, utility, and wood/paper industries — expect as a result of this focus on climate change?

DEFAZIO: One of the defining challenges of our time is the climate crisis, and the transportation sector is the number one source of carbon pollution in the United States. This is truly our opportunity to replace the systems of the past with smarter, safer, more resilient infrastructure that fits the economy of the future while creating millions of good-paying jobs, supporting American manufacturing, and restoring U.S. competitiveness. By investing in clean transportation systems, building resilient infrastructure, and launching new initiatives to reduce greenhouse gases, we can both address climate change and create good, new jobs at the same time. ■

Bouncing Back: Infrastructure & the New Energy Economy

BY DOUGLAS J. MCCARRON, GENERAL PRESIDENT
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA



The past year has been challenging on many fronts. As we see the light at the end of this dark tunnel, I'd like to take this opportunity to thank union contractors across the U.S. and Canada for working with us to make sure our members and our worksites have stayed safe. We have had to change our protocols and our worksites, but our culture has always been safety first. Our mindset, our training and our ability to work together to adapt has meant that as construction was deemed essential, our members were able to stay safe.

When things started to shut down in 2020, we developed a new online UBC COVID-19 Preparedness course for our members in a matter of days. To ensure that the entire jobsite was safe, we also made this training available directly to contractors so it could be used with every trade. So far, more than 60,000 building trades men and women have taken the class.

Although our members are accustomed to wearing and working with PPE, we recognize that at times the new protocols for safety have slowed productivity. But by working together, labor and management have been able to address these challenges using our creativity, expertise and the mindset of production that is instilled in us.

While we spent the last year adapting, I'm optimistic that over the next year we will be able to focus on real opportunities that are ahead for the unionized construction industry. Convincing Congress to act will be a big first step in making it happen.

Staying Focused on Pension Reform

First, we are firmly committed to strengthening and modernizing the multiemployer pension system. We applaud Congress for including money necessary to ensure that failing pension plans didn't bankrupt the Pension Benefit Guarantee Corporation (PBGC). However, the budget reconciliation process didn't allow necessary reforms to the pension system to be included in the just-passed American Rescue Plan. That must be done, and quickly.

The UBC remains committed to pushing Congress to allow our jointly managed pension funds to create new plan designs — including hybrid composite and updated variable benefit plans — that would improve the sustainability of our pensions, ensure that hard-earned benefits are available for members when they retire, and reduce or eliminate withdrawal liability for employers.

On this front, as you know, legislative efforts have been frustrated so far. Some unions, even in the construction industry, have steadfastly opposed our efforts —even when we've assured them that only plans with broad labor and management support can opt into a composite plan. But now we're close to making real progress and have Congressional leadership on our side. The Carpenters Union will continue to lead efforts to partner with our employers to modernize our industry and secure our members' benefits for the future.

Infrastructure Opportunities

Second, thanks to President Biden's leadership and the commitment of legislators, I'm more optimistic than I have been in years for a real, bold, large investment in infrastructure. With interest rates near zero and the number of adults in the workforce falling off dramatically, this is what the country needs — and Washington knows it. How big? How bold? How much "green" will be included? That probably depends on if it will be necessary to secure 60 votes to overcome an expected Filibuster in the Senate.

We'll see. We all know that a large infusion of cash into our traditional transportation

> *It is possible to combat climate change…while ensuring that we don't cripple the economy and replace good working-class careers with low-wage work.*

infrastructure is needed. Raising the gas tax, which is the usual method of paying for roads and bridges, is unpopular on the Hill and never seems to get the support it needs. It also becomes less relevant as fuel efficiency increases and electric vehicles proliferate. We certainly also need significant investment in other traditional infrastructure, including clean water, wastewater, airports, ports, locks and dams.

We also should invest heavily in projects that are transformative for regional economies — mass transit, high-speed rail and broadband expansion. These are the types of investments that help address the affordable housing crisis and promote and encourage private economic development. For example, in California, if we build a new high-speed rail line from Los Angeles to Lancaster, the areas around those stops will explode with construction of new apartment buildings and commercial centers. These kinds of long-term investments will create good-paying construction jobs for twenty years and we should applaud any plan that puts serious money into them.

The New Energy Economy

It's the "green" investments that are the most controversial in our world. Our union's carpenters, millwrights and pile drivers perform a very high percentage of the work in oil refineries, coal and gas plants. It's a huge base of our work hours and critical to our members' livelihoods in many markets. President Biden's decision to shut down the Keystone pipeline caused thousands of union construction workers to lose jobs, including our members. We continue to advocate for the pipeline project and other forms of production and processing that make North America energy independent.

We are also focused on protecting jobs in the nuclear energy field, which has never been more important. Subsidies for renewable energy have made it hard for many nuclear plants to compete. It would be a great tragedy if these plants were forced to close because of that. We all know that nuclear is not only an incredible source of steady, reliable, carbon-free electricity, but also creates good union jobs. We should all partner with that industry to ensure they are not at a competitive disadvantage to other carbon-free energy.

While we can and should continue to fight for all of our traditional work, we must recognize that the energy economy is changing and make aggressive moves to ensure that the emerging jobs in renewable energy are also, as President Biden has promised, "good, union jobs." While some of the work in wind and solar energy has been secured by union signatory contractors, unions and our industry partners need to aggressively expand into this space. We are engaging in a big push to ensure that renewable energy tax credits and any other subsidies for green energy are covered by the Davis-Bacon Act and other labor standards. It is possible to combat climate change and move to more renewable energy while ensuring that we don't cripple the economy and replace good working-class careers with low-wage work. We need your help to make sure that these standards are enacted into law.

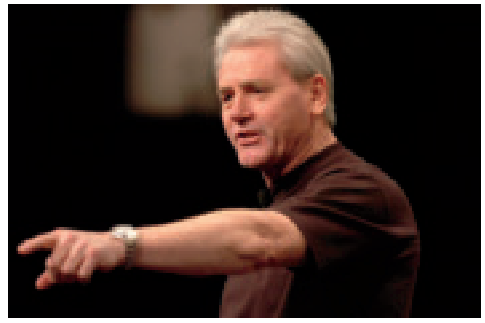
As always, the UBC's legislative goals are focused on making sure that our industry partners, who invest so much in the training, leadership development and livelihoods of our members, are not placed at a competitive disadvantage when bidding on taxpayer-subsidized work. We continue to promote our best-in-class apprenticeship and training programs, defend against the efforts of low-wage competitors to access taxpayer funds to compete with them, and modernize our benefit structures to ensure sustainability for the long term.

I'm optimistic that we're going to make real progress in this Congress, and that our labor-management model of partnership will continue to pay dividends over the long term. ■

SPOTLIGHT: GOVERNMENT AFFAIRS

On Infrastructure, It's Time To Walk the Walk

BY TERRY O'SULLIVAN, GENERAL PRESIDENT
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA



At a time when our great nation is more divided than ever, there is one thing on which Americans at all points on the political spectrum can agree: the need to fix our crumbling infrastructure. Republicans and Democrats, Liberals and Conservatives, residents of red states and blue states, all share the same frustration over broken water mains, pothole-filled roads, congested highways, deteriorating bridges, and an aging power grid.

For decades, my union, the Laborers' International Union of North America (LIUNA) has been making the case for greater federal infrastructure funding, along with our brothers and sisters in North America's Building Trades Unions (NABTU), our management partners at The Association of Union Constructors (TAUC), the U.S. Chamber of Commerce, and many other business and labor groups.

Now that we are beginning to emerge from the COVID-19 pandemic and the economic harm it caused, and now that a new Congress and a new President have taken office, it is time to act. The public is eager for stronger infrastructure; the economy needs a boost; and unemployed workers, whose ranks have swollen over the past year, are desperate for good jobs. We must strike while the iron is hot.

President Biden's stated desire to invest $2 trillion into infrastructure funding is refreshingly bold and recognizes the true scope of the challenge before us. Even when adjusted for inflation, it is more than four times larger than the landmark Federal Highway Act of 1956, whose $51-billion price tag would be the equivalent of $490.5 billion today. That legislation not only financed one of the greatest highway networks the world had ever seen; it also contributed to one of the largest expansions of the middle class in our nation's history. Thanks to the *Davis-Bacon Act* and other prevailing wage laws, strong collective bargaining and project labor agreements, and the commitment and resolve of legislators willing to stand by the working class, the majority of these highway and road construction jobs were good jobs. Their wages and benefits served as a path to the middle class for millions of workers, including generations of LIUNA members.

In 2021, LIUNA members in the heavy and highway sector are as eager, willing, and able to strengthen America's infrastructure as they were in 1956. Our members are proud that the structures they build will improve the lives and enhance the safety of their fellow Americans.

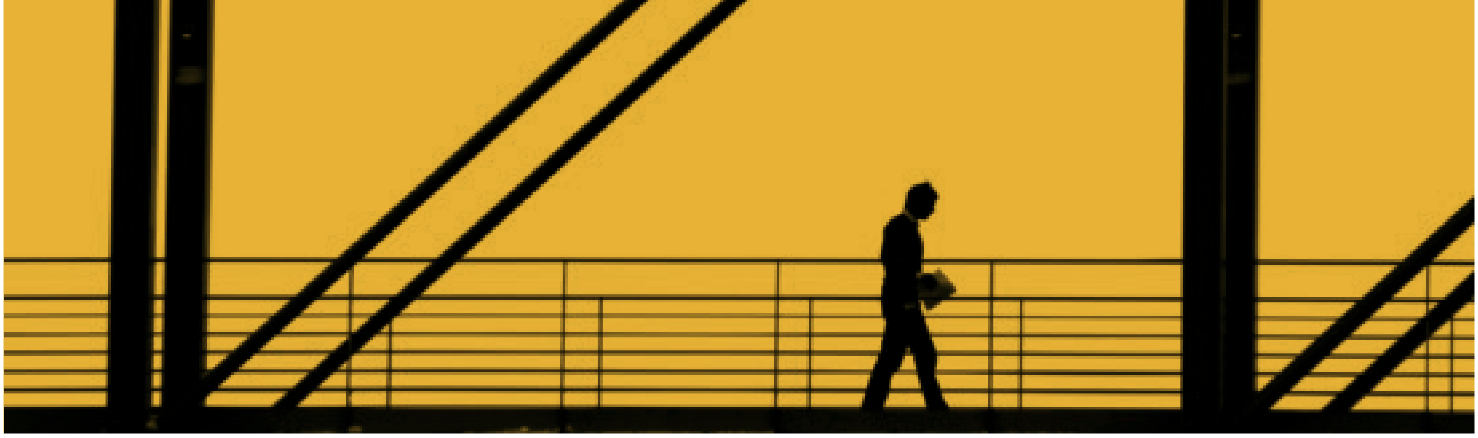
Recently, I had the pleasure of meeting with President Biden at the White House, along with several other union leaders. I've known Joe Biden for years. As a Senator, he stood by our side during many legislative battles and debates. As Vice President, he fought alongside President Obama on behalf of working families. Joe Biden is a smart, strategic, pragmatic leader who never lets ideology get in the way of action, yet holds true to his core values and principles. The proud son of working-class parents, he never forgets where he came from, he values hard work and those that do it, and he knows that our nation's greatest assets are its working men and women. Most of all, he is one of the most decent human beings I have ever met. If anyone can get a $2-trillion infrastructure plan through a too-often gridlocked House and Senate, he can.

President Biden's commitment to "building back better" is real and genuine, but the

> ***It's time for elected officials to get on board and back strong infrastructure funding.***

proof will be in whether the jobs created by his infrastructure plan are good jobs. "Build back better" must mean not just better roads, better energy, better power grids, better technology, and better infrastructure overall, but better jobs. They must be jobs that pay middle-class wages, offer good benefits, and enable the men and women building our 21st century infrastructure to build better lives for themselves and their families.

We demand the same thing from Democrats, Republicans and Independents: that *all* infrastructure projects that receive any federal funding, in whatever form, incorporate strong labor, wage, and benefit standards that protect workers and level the playing field for all bidders. We will not stand by and let low-road, low-wage, no-benefit contractors undercut high-road union contractors who pay good wages, contribute to benefit funds, and invest in genuine training and apprenticeship programs. In order to truly build back better, strong labor standards must not be treated as afterthoughts, add-ons, or bargaining chips; they must be non-negotiable.



Even with adequate funding and strong labor standards, federal infrastructure funding will do little or nothing to spur economic growth if it continues to take an average of seven years for projects to clear the environmental impact and permitting process. Over the past 50 years, the vital and important environmental reviews required by the National Environmental Policy Act (NEPA) have been weaponized to delay projects, to drive up their costs, and, in some cases, to kill them outright. LIUNA supported the previous administration's efforts to streamline the environmental review process required by NEPA, and we hope that President Biden will continue to defend these regulatory reforms in several lawsuits that have been filed to challenge them.

In the coming weeks and months, as the details of the President's $2-trillion infrastructure plan begin to take shape, and as it moves its way through Congress, the 500,000 strong, proud, and united men and women of LIUNA will be there to support it and demand its passage. We'll be waiting to see which members of Congress who talk the talk on infrastructure are ready to walk the walk by making tough choices, working with colleagues on the other side of the aisle, and doing what needs to be done. It's time for elected officials of all political stripes to get on board, back strong infrastructure funding, and put up or shut up.

I look forward to working closely with TAUC and your new CEO, Dan Hogan, as we lobby Congress to turn good intentions into good roads, good projects, and good jobs. I know that Dan will be as dedicated and devoted to this cause as Steve Lindauer, and that when LIUNA, TAUC, and our labor and management partners speak with one voice, elected officials will have to listen. ■

Multiemployer Pension Plans Get a Reprieve — But More Reform Is Needed

BY JOSH SHAPIRO, SENIOR ACTUARIAL ADVISOR, GROOM LAW GROUP

After many years of discussion and debate, Congress has taken action on the impending multiemployer pension crisis — which, if left unaddressed, would have led to the failure of over 150 plans covering roughly 1.5 million active and retired workers. Although primarily aimed at the COVID-19 pandemic, the recently passed American Rescue Plan Act (ARPA) provides special financial assistance to failing multiemployer plans that will keep these plans afloat for many years to come. ARPA also contains temporary funding relief that is broadly available to multiemployer pension plans.

Despite extensive negotiations that sought a bipartisan solution to the pension crisis, ARPA was passed along strictly partisan lines. While ARPA does not address the fundamental weaknesses of the multiemployer pension system that led to the current crisis, it has averted the imminent collapse of the system, which is good news for participants and contributing employers.

The temporary funding relief provisions of ARPA allow plans to freeze their zone statuses for a year, extend their funding improvement and rehabilitation periods, and recognize investment and other losses over an expanded time horizon. These provisions may allow some plans to take less severe measures to improve their funding levels compared with prior law. However, those measures would need to remain in place over a longer period of time, as ARPA does not make any permanent changes to the funding goals. The temporary funding relief provisions of ARPA may have a modest impact on near-term contribution and benefit levels but are unlikely to affect many plans dramatically.

Under ARPA, underfunded multiemployer plans that meet certain conditions will receive lump sum payments from the government that do not need to be repaid. The Congressional Budget Office has estimated that these payments will total $86 billion, though the legislation does not cap the amount that can be paid. Plans that are projected to be insolvent within 20 years or have implemented benefit suspensions under the Multiemployer Pension Reform Act are eligible for assistance under ARPA. Certain recently insolvent plans are also eligible, as are critical status plans that have a ratio of active to inactive participants of less than 2-to-3 and a funded ratio below a specified level.

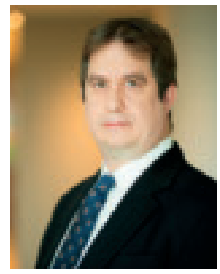
The application window for special financial assistance is open for four years, so it is not necessary for plans to act immediately. The amount of financial assistance that eligible plans will receive is determined such that plans will be projected to remain solvent until 2051. There are some significant ambiguities in the assumptions and methodologies used to determine the amount of assistance, and depending on how those ambiguities are resolved, eligible plans might actually be solvent for a longer or shorter period of time. Regulations clarifying the amount of assistance are likely to be issued in July, and plans are not able to apply for assistance until then.

ARPA special financial assistance is, of course, an enormously positive development for the participants and employers in the deeply underfunded plans that will receive payments. The positive impacts of ARPA are, however, not limited to the plans that are eligible for assistance. Keeping plans solvent reduces the liabilities of the

Permanent fundamental reforms are needed to ensure that plans do not make promises to participants that they cannot keep.

Pension Benefit Guaranty Corporation, thereby reducing the need for higher PBGC premiums. In the absence of ARPA, it is likely that those premiums would have increased dramatically across all multiemployer plans in the coming years, as opposed to the far more modest deferred increase that was included in ARPA.

Additionally, without ARPA, in roughly five years a very large number of participants would have lost their benefits nearly in their entirety. It is likely that Congress would have stepped in to prevent this calamity at that time, but a last-minute bailout might have been accompanied by punitive measures targeting labor unions. Many members of Congress blame unions for the pension crisis, as well as other perceived issues, and being forced to save more than a million participants from massive benefit losses would have provided a pretext for significant anti-union measures. The collectively bargained employers contributing to



Josh Shapiro is the Senior Actuarial Advisor for Groom Law Group. His practice focuses on the design, funding, and administration of multiemployer, single-employer, and governmental retirement plans.

the pension plans might have ended up as collateral damage.

While ARPA has dealt with the immediate problem in the multiemployer pension system, much remains to be done. All the instabilities and weaknesses that allowed roughly 150 plans to become hopelessly underfunded remain, and there is nothing preventing the plans that are currently healthy from meeting the same fate in the future. Moreover, the employers contributing to multiemployer plans are still essentially acting as insurers of future stock market returns. The absurdity of this arrangement becomes clear when you consider that no actual insurance company is willing to take on such a risk.

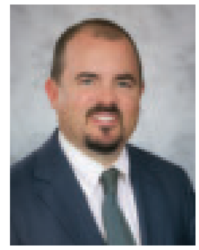
The multiemployer pension system will not become truly sustainable until it is reformed to manage risk more appropriately. Either benefits must be supported by low-risk investments, or to the extent that investment risk is taken, the benefits provided must be flexible enough to absorb that risk when necessary. To this end, for years Congress has considered authorizing a new type of multiemployer retirement plan known as a composite plan. Composite plans operate much like current pension plans, except that there is no concept of withdrawal liability, and once an underfunded plan has taken all the traditional measures to raise its funding level, the trustees are authorized to reduced benefit levels to maintain the financial integrity of the plan. Composite plans have been included in proposals released by both Democrats and Republicans, though they could not be included in ARPA due to procedural constraints.

To use a metaphor, ARPA has extinguished the flames but the house remains highly flammable. Permanent fundamental reforms are needed to ensure that plans do not make promises to participants that they cannot keep, and to ensure that employers are not subjected to unreasonable and unmanageable financial risks. Composite plans represent a large step in the right direction and are one of the few topics on which both parties have agreed in recent years. It is imperative that all stakeholders continue to remind members of Congress that the job is not finished yet. ■

Finally, Having the Word "Union" in Our Name Pays Off

BY TODD MUSTARD, TAUC VICE PRESIDENT

Todd Mustard is Vice President of TAUC. He can be reached at tmustard@tauc.org.



What's in a name? Quite a lot, as it turns out.

In the late 1990s, our Board of Directors decided it was time to change the name of our organization. There was a disconnect that just couldn't be ignored any longer. We had been calling ourselves the National Erectors Association (NEA) since the group's creation in 1969. For years, though, we had been representing a diverse group of contractors who worked with multiple crafts across a wide variety of business sectors, not just steel erection. To stay true to our mission and our members, it was time to rebrand.

Ironically, the success of the National Maintenance Agreement (NMA) — the project labor agreement the NEA created — helped foster this identity crisis. Designed to help the Iron Workers and their allied contractors compete better in the industrial maintenance space, the 13 other building trades quickly realized the value of the NMA and its potential to help their market share grow, too. Pretty soon everyone was using it — general contractors, specialty contractors, construction managers, you name it. Many of those companies also joined the NEA. So we finally changed our name to NEA — The Association of Union Constructors. Then, in 2007, we dropped NEA altogether and became The Association of Union Constructors, or TAUC.

Unlike other mainstream, member-driven associations (especially those not in construction sectors), the newly christened TAUC chose not to adopt a traditional "us versus them" stance when it came to dealing with labor. In fact, we moved in exactly the opposite direction. TAUC firmly believes in emphasizing the "Union" in our name and establishing strong and productive relationships with the trades. That, in turn, helps our members build their businesses, which, in turn, leads to hiring more craftworkers. Oh, and TAUC looks pretty good in the process, too. It's a win-win-win scenario.

It's important to stress just how unusual such an approach is in the trade association world. Most groups expand their ranks (and their bank accounts) by demonizing the other side and telling their members they will fight for them. It's a great way to make short-term gains and long-term enemies. TAUC wisely chose a different path.

Now, in 2021, that counterintuitive strategy is paying a fresh set of dividends. Just look at this issue of the magazine. Where else can you find articles from LIUNA General President Terry O'Sullivan, United Brotherhood of Carpenters General President Doug McCarron, and Rep. Peter DeFazio, D-Ore., Chairman of the powerful House Transportation and Infrastructure Committee, which will soon begin shepherding through a massive infrastructure-spending package? Trust is a rare commodity in Washington, and TAUC earns that trust by putting our principles into action.

We've leveraged our relationships with the individual trades to ensure that more and more large, sophisticated industrial projects are built safely, efficiently and effectively under the terms of the NMA. And on Capitol Hill, we work closely with North America's Building Trades Unions. Together, we demonstrate how labor and management can work together to support legislation and regulations that will have a positive effect on our industry.

It's also quickly become evident that the Biden administration will be one of the most labor-friendly in recent memory. Marty Walsh, the new Secretary of Labor, is a card-carrying Laborer and former head of the Boston Building Trades. And President Joe Biden himself has strongly and repeatedly voiced his support for unions (see TAUC President Steve Johnson's article on Page 4).

So yes, I'm not going to lie: it's a good time to be a trade association with "Union" in your name. We are confident our track record will open doors and help us advocate for our members' concerns at the highest levels of government, from the White House to Congress to the federal bureaucracy. When the administration is on the right track, we will lend our support. And when it does something we feel is damaging to our members or the industry as a whole, we won't be shy in speaking up. But in either instance, we truly believe our voice will be heard, and that's a refreshing change.

We have a brief window of opportunity in which to act. Time moves swiftly — just look at how different our world is now compared with a year ago. So I promise you that TAUC will waste no time in getting down to business. But we can't succeed without you. Your support throughout the pandemic has been incredible, and we need it to continue. If you're looking for a way to help, just drop me a line at tmustard@tauc.org.

In the meantime, stay safe, and here's to a productive 2021! ■

TAUC Advocates for Employers in Withdrawal-Liability Cases

BY KATHARINE MEYER, ESQ, GKG LAW, P.C.

This past fall, TAUC became aware of two alarming lawsuits between union construction employers and pension funds regarding whether an employer is liable for pension fund withdrawal liability under the Multiemployer Pension Plan Amendments Act of 1980 (the MPPAA), which amended the Employee Retirement Income Security Act of 1974 (ERISA). These cases threaten long-standing precedent that protects construction employers from enormous pension withdrawal penalties in the event they stop doing business, or conduct significantly less business, in a certain area. If the pension funds succeed in either case, it could severely affect the union construction industry and cause significant financial harm to many of TAUC's members.

Accordingly, TAUC has taken the unusual step of filing amicus briefs in these cases. While TAUC rarely involves itself in third-party litigation, because of the negative effect these cases could have on TAUC's membership, TAUC felt obligated to educate the courts on the proper reading of the MPPAA and the effect an improper decision could have on the union construction industry.

Here is a summary of issues involved in each case:

Sofco Erectors, Inc. v. Trustees of the Ohio Operating Engineers Pension Fund

Under the withdrawal liability scheme set forth in ERISA, when a contributing employer to a multiemployer plan incurs a complete or partial withdrawal, it is required to pay an exit fee equal to its share of the pension's underfunding. In certain instances, an employer can incur a partial withdrawal if, for three consecutive years, there is a 70% decline in the hours worked relative to the historical number of hours worked by union employees.

However, Congress created an exemption for building and construction industry (BCI) employers. This exemption was created because construction work is usually done project by project. Thus, when employment ends, an employer's workers will remain in the labor pool available for employment by other employers and pension fund contributions will continue. Therefore, under the BCI exemption, withdrawal liability does not arise unless the employer is using nonunion workers to do the work previously done by union employees.

The *Sofco* case is on appeal in the U.S. Court of Appeals for the 6th Circuit. Before being appealed, the lower court held that union construction employers are responsible for partial withdrawal liability if their contributions to the pension fund decline by 80% or more, even if they do not employ nonunion labor. This decision is clearly contrary to the legislative history of ERISA and prior case law. Additionally, this decision would create an anomalous result whereby employers who have a significant reduction in construction work, but still continue to employ union employees, would be liable for large sums of withdrawal liability, but union employers who completely stopped doing business in an area would incur no withdrawal liability.

Accordingly, on Sept. 10, 2020, TAUC filed an amicus brief with the 6th Circuit, setting forth the reasons the district court erred in its decision.

PSF Industries, Inc. v. Boilermaker-Blacksmith National Pension Trust

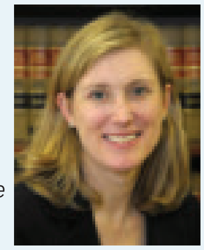
The *PSF Industries* case is an appeal of an arbitration decision, in which the Arbitrator found PSF Industries (PSF) liable for $16,551,038 in withdrawal liability because it did not meet the requirements of the BCI exemption.

The requirements of the BCI exemption for complete withdrawal are set forth in 29 U.S. Code § 1383(b). This statute states, in part, that a complete withdrawal only occurs if "substantially all of the employees" with respect to whom the employer has an obligation to contribute under the pension plan, perform work in the building and construction industry.

PSF was an industrial contractor that employed both shop employees and field employees. Shop employees were typically long-term, permanent employees. Field employees were mostly temporary employees, hired out of union halls. During arbitration, PSF argued that it fell under the BCI exemption because substantially all its employees were field employees. The arbitrator disagreed.

The arbitrator made two extraordinary decisions in this case. First, he held that while the statute clearly stated that substantially all "employees" must be used to determine the BCI exemption, he was free to accept the fund's creative position to use contribution base units, instead of the number of employees, in making this determination. Additionally, *While TAUC rarely involves itself in third-party litigation, because of the negative effect these cases could have on TAUC's membership, TAUC felt obligated to educate the courts.*

Katharine Meyer is a Principal at GKG Law, P.C. in Washington, DC. For the past 19 years, Katie has been a member of the firm's Association Practice Group, which provides legal advice to nonprofit organizations throughout the United States.



he determined that he could also consider the "totality of relevant factors" in making this determination.

Not only does this decision clearly conflict with the plain language of the statute, but this new, vague method of determining the number of BCI employees means that employers will have no clear standard by which to assess the liabilities they are undertaking by engaging union labor to perform construction projects.

Second, the arbitrator made it virtually impossible for a union contractor to determine the time frame that should be reviewed to confirm the BCI exemption has been met. Instead of using a simple cumulative (or even annual) head count of employees, the arbitrator again accepted the fund's creative position and elected to: (i) review monthly snapshots of head count as a percentage of total employee head count, (ii) review the number of months those percentages fell below 85% in a year, (iii) compute annual averages of those monthly percentages, and (iv) reweigh those averages over a 10-year period. In short, he made a simple concept exceedingly complicated.

By using this skewed method of calculation, the arbitrator ignored the seasonal and cyclical nature of boilermaker work and unfairly imposed liability when it should not have existed.

On Jan. 12, 2021, TAUC and the National Association of Construction Boilermaker Employers (NACBE) filed an amicus brief in this case, setting forth concerns regarding the arbitrator's decision and informing the court how the arbitrator's decision, if upheld, could put TAUC and NACBE members, and their owners, at risk of incurring insurmountable withdrawal liability.

No decision has been rendered in either case. TAUC will continue to monitor these cases and inform its membership of any decisions that create new rules in determining pension withdrawal liability. ■

TAUC Announces New Group 401(k) Program for Members

At The Association of Union Constructors (TAUC), our mission is to deliver real value to our member contractors — and that includes offering select benefits and resources that can better position them for success. That's why we're excited to announce the new TAUC Group 401(k) Program exclusively for TAUC members.

What Is a Group 401(k) Program?

The TAUC Group 401(k) Program helps contractors manage the complicated administrative tasks involved with operating their companies' retirement plans.

When a contractor joins the program — typically at a competitive group rate — many of the day-to-day tasks involved in running a retirement plan are handed over to third parties, such as administrative and investment fiduciaries.

In other words, contractors get the benefit of offering a 401(k) to employees without having to own all the work, responsibility and liability.

And if you're a TAUC Local Employer Organization (LEO) member, we have great news: you can offer the TAUC Group 401(k) Program to your members as well — even if they aren't a member of TAUC!

Who Runs the Program?

The Merrill Lynch Wealth Management Team, led by Roger Feldman and Chris Hicks, has extensive experience working with union contractors and has partnered with a network of diverse and committed third-party providers to offer competitive recordkeeping and plan administrative services to best serve your retirement plan needs.

Together, Merrill Lynch, Lincoln and The Retirement Advantage (TRA) are here from initial consultation to implementation and through post-conversion support to assist TAUC members and plan participants with running a customized and efficient retirement plan.

Why Is Now a Good Time to Consider a Group 401(k) Program?

As you may know, the IRS and Department of Labor require retirement plan sponsors to restate their plans every six years. This involves amending your plan document in its entirety and incorporating any legal or procedural changes that have been adopted since the last restatement. The deadline for the next restatement is July 31, 2022.

Restatement is complex and time-consuming; the paperwork alone can be overwhelming. The good news is that if you join the TAUC Group 401(k) Program, TRA will thoroughly review your plan, offer suggestions on how to strengthen it and take care of the entire restatement process for free.

Is It the Right Fit for Your Company?

We understand that moving to a new 401(k) program is a big decision and you have many important questions that need to be answered. We've created an informative website — www.tauc.org/401k — where you can watch a short video and download additional reading material. Or reach out directly to TAUC Group Program Liaison and Merrill Lynch Financial Advisor Roger Feldman at (800) 281-1246 or email him at roger.feldman@ml.com. ■

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TAUC, MCAA and NECA Sign Strategic Alliance Agreement

The three groups will collaborate to advance the construction and maintenance industry

NECA's Long, MCAA's Brink, and TAUC's Lindauer sign agreement

On Feb. 22, the Mechanical Contractors Association of America (MCAA), the National Electrical Contractors Association (NECA) and The Association of Union Constructors (TAUC) entered into a tri-party strategic alliance agreement to collaborate on issues affecting the construction and maintenance industry on a national and regional level.

Through this alliance, MCAA, NECA and TAUC will conduct joint meetings and share information of mutual interest relating to environmental health and safety, industrial relations, government affairs, and innovation and technology. The three organizations will develop products and practices to jointly benefit their respective memberships, increase membership awareness of industry issues and much more.

"MCAA, NECA and TAUC have come together in a strategic alliance to better serve our members and to strengthen our organizations in an effort to help protect the unionized construction industry," said Timothy J. Brink, MCAA CEO.

"I am excited that NECA, TAUC and MCAA are joining together in this strategic alliance, which will align our efforts to provide the safest, most innovative work to project owners," said David Long, NECA CEO. "Through this agreement, NECA will be well positioned to serve its members in new ways by collaborating to serve the interests of the unionized construction industry across America."

"Union contractors understand that our industry is always strongest when we work together," said TAUC CEO Steve Lindauer, who retired at the end of February. "TAUC's new alliance with NECA and MCAA will strengthen our respective organizations and, most importantly, help us provide even greater service to our members moving forward." ■

Onward & Upward: Personnel News

*TAUC Members — we want your personnel news! Send press release and info to Director of Communications David Acord at **dacord@tauc.org**.*

MATT HEDKE: Matt has been promoted to VDC Director of Barton Malow Company, the industrial entity of Barton Malow's Family of Companies, where he will lead Virtual Design + Construction and Building Information Modeling (BIM) on projects. "I'm excited to continue to lead the identification and implementation of technology into our union projects to drive safety, quality, and productivity on our projects," Matt says.

DANIEL EARNEST: Enerfab has promoted Daniel to General Manager of their Midwest region based out of Kansas City, Missouri. Earnest will be responsible for managing all operational functions of the Midwest region. Aaron Landolt, CEO of Enerfab, commented, "We are excited to have Daniel in this critical role. His operational experience over the past ten years, as well as the variety of leadership roles he has played within the Enerfab Kansas City office, made him the perfect choice to continue our growth in this important region."

RACHEL RITTER: Enerfab has promoted Rachel Ritter to Director of Operations for their Cincinnati fabrication shop. She is the first female shop leader in the company's 119-year history. "This is a great opportunity for Rachel and our organization," Executive VP of Fabrication Dave Winnestaffer commented. "Rachel has done a little bit of everything during her 11 years at Enerfab and has spent the last two years preparing to take on this important leadership role. She's the ideal person to run our shop, and we're excited about the impact she will have on our organization for years to come."

KATHLEEN DOBSON: Kathleen Dobson, Safety Director for Alberici Constructors Inc., has been appointed Safety Representative to the National Advisory Committee on Occupational Safety and Health (NACOSH), OSHA announced February 3. Alberici is a longtime TAUC Governing Member and Dobson is active on the TAUC EHS Committee, having formerly served as chair. TAUC was honored to nominate her for this position and congratulates her on the prestigious appointment!


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