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# Protecting Workers under Public-Private Partnerships:

Public Sector Union Experiences and Models

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## Introduction

The purpose of this paper was (a) to locate “best case” examples of outcomes for workers under public-private partnerships, as well as some “worst cases” to demonstrate the possible negative outcomes and (b) to provide contextual information about the countries’ union, labor law and political environment to provide a basis for understanding the cases. The cases we sought were those in which workers were represented by unions who played an active role in trying to influence their members’ fates under public-private partnerships. We limited the scope of our research to the United Kingdom, Ireland, Australia and Canada, countries with advanced economies where we could most easily obtain information without language obstacles.

There are difficulties in making generalizations relating to national instances which are in so many respects unique. These generalizations are offered here, recognizing that this research project has only uncovered a portion of the political and labor relations histories of the respective countries. Another difficulty, indeed a paradox, has been finding cases that are unequivocally beneficial for public sector workers. The “best-practice” case studies that we found are not “all good”; however the mix of benefits and problems found in these cases reflects the real-life contradictions that unions in the U.S., or anywhere for that matter, are likely to face as they try to make the best of a situation that is inherently problematic.

### **Organization of the paper**

- The cases in this paper differ greatly by country, reflecting a number of factors:
- The momentum behind the expansion of PPPs, which in turn reflects the balance of political power between parties who view markets as superior to government and those who have a more pro-public sector stance,
- The strength of public sector unions and relative size of the public sector within the mixed economy,
- The strength of the labor movement in general,
- Individual country and provincial/state labor law, and
- How long PPPs have played a major role in infrastructure development.

The paper begins with an Introduction that addresses the research agenda and methods and the definition of “public-private partnership.” Following the introduction, it is divided into national sections: the United Kingdom, Canada, Australia and Ireland. Within each of these sections there is first an introductory section that describes the above factors, followed by the case study or case studies from that country. It ends with a Discussion and Recommendations section.

## **Understanding Public-Private Partnerships (PPPs)**

A Public-private partnership is a system in which a government service or private business venture is funded and operated through a partnership of government and one or more private sector companies. These schemes are sometimes referred to as PPPs or P3s. In some types of PPP, the government uses tax revenue to provide capital for investment, with operations run jointly with the private sector or under contract. In other types (notably the Private Finance Initiative), capital investment is made by the private sector on the strength of a contract with government to provide agreed services. Government contributions to a PPP may also be in kind (notably the transfer of existing assets).

Typically, a private sector consortium forms a special company called a “special purpose vehicle” (SPV) to finance, build and maintain the asset. The consortium is usually made up of a building contractor, a maintenance company and a bank lender. It is the SPV that signs the contract with the government and with subcontractors to build the facility and then maintain it. A typical PPP example would be a hospital building financed and constructed by a private developer and then leased to the hospital authority. The private developer then acts as landlord, providing housekeeping and other non medical services while the hospital itself provides medical services. There are also PPPs that are Joint Ventures. In these cases, the public authority is a partner in the newly created consortium with some partial equity in the newly created entity.

Different types of partnerships may be categorized in terms of what set of services are included in the contract. These services may include some or all of the following:

- Finance
- Design
- Build
- Operate
- Maintain

Using these categories, it’s clear that PPPs are not completely different animals from either traditional government construction contracts or what’s called “privatization”. What sets PPPs apart is the inclusion of the “operate” component, and sometimes the “finance” component as well. Traditionally, when a public entity wants to add or improve infrastructure, bonds are issued – the financing remains in public hands – and the designing and building are contracted out. The public sector takes on the debt “up front”. Once built, the infrastructure is operated and maintained by the public authority. But with public-private partnerships some or all of these functions are taken on by the private sector. Generally, a public authority must make regular payments to a private contractor for their services over the life of the contract governing their partnership.

A PPP can be of the “concession” type, where only the “operate” function or the “operate” and “maintain” functions of some revenue-generating infrastructure such as a toll road are contracted out. This type of PPP represents only a small portion of PPPs world wide, though they are making headlines in the United States at this time. In this type of PPP, the public entity does not need to make payments for service delivery because of the alternative source of revenue for the private partner; in fact the public sector receives a large payment as part of the contract.

***The following section reviews the context for organizing and case studies of best and worst practices of PPP arrangements in regions: the UK, Australia, Canada, and Ireland.***

## Public Private Partnerships in the United Kingdom

### Political and Labor Relations Context

Public Private Partnerships were first adopted on a wide scale in the United Kingdom, under the Private Finance Initiative and currently they represent between 15% and 33% of total public investment in the UK. Because their approach then served as the model for other nations, it is the best place to begin to understand how unions have fought to protect members under PPPs.

Unions in the UK were faced with very few protections as PPPs swept through the country. They developed their campaigns and strategy in this context and have accomplished a great deal, at least as seen from a United States perspective. The public sector union, UNISON, representing the vast majority of public sector employees, has headed up that fight. With 1.3 million members, UNISON is the largest union in the UK.

In the 1980s, Margaret Thatcher began a process of large scale privatization by removing union protections for workers and selling state assets. Thatcher was in power for almost twelve years, from 1979 through 1990 and the Conservative Party remained in power in the UK for another seven years after. During this long period, UNISON pursued a fight-back strategy to oppose privatization but at the same time sought incremental improvements in legislation to protect workers whose jobs were going private.

Conditions would have been worse for workers if the U.K. had not been a member nation of the European Union, which had rules on procurement that provided a minimum level of protection under contracting-out. The law that translated these rules into British law was the Transfer of Undertaking for the Protection of Employment (TUPE) statute, passed in 1981. However, under this law, private employers were able to bring in new hires at lower wages than those who transferred from the public sector, a blow to union strength.

In 1992, the Private Finance Initiative (PFI) was undertaken as a method of facilitating and structuring public-private initiatives, and the Labour government that came into power in 1997 has continued to support the PFI. However, the government under Tony Blair has demonstrated considerably greater willingness to embrace union-backed reforms that provide additional

protections to workers. A more detailed history of those reforms appears in Appendix 1.

### UK Legal History – Labor Law

In the UK, the scope for compulsory union membership (the ‘closed shop’) was progressively restricted in a series of step-by-step measures during the 1980s and made unlawful altogether in 1990.<sup>1</sup> Despite this, collective agreements are bargained to cover an entire bargaining unit (though ‘bargaining unit’ is a U.S. term). This helps explain the “two-tier” workforce problem that arose in the UK under PPPs. TUPE only covered transferred workers, and new workers were hired in under individual contracts at lower pay. In earlier years, this type of erosion of union representation would not have happened. Despite the absence of union shop protections such as exist in the United States, contracts covered everyone in a bargaining unit, and unions – when stronger – would have organized new hires and mobilized against employers who followed this union-busting practice. As the strength of the labor movement in the UK declined, emboldened anti-union employers sought individual employment contracts with non-members in increasing numbers in a self-reinforcing process.

### Union Density

Union density in the United Kingdom declined during the past 25 years. Comparisons over time show a (continued) decline in the coverage of collective bargaining since 1990. Coverage fell from 49 per cent in 1990 to 34.5 per cent in 1998. From 1999 a further small decline is apparent, from 36 per cent in 1999 to 35.5 per cent in 2001 (discrepancies in percentages due to a change in data collection between ‘98 and ‘99). In 2001, coverage was estimated as 22% in the private sector and 73% in the public sector.<sup>2</sup>

<sup>1</sup> Marginson, Paul, European Industrial Relations Observatory, “Comparative study on collective bargaining coverage and extension procedures: UK report”, 2002, <http://www.eiro.eurofound.eu.int/2002/12/word/uk0209103s.doc>

<sup>2</sup> Europe Industrial Relations Observer Online, <http://www.eiro.eurofound.eu.int/2002/12/word/uk0209103s.doc>

## Status of Public Private Partnerships in the UK

The PFI is structured so as to make the private partnership option most attractive to public authorities when they face the need to renovate or expand infrastructure. First, it requires that a public-private partnership be considered as one option every time such a situation arises. Second, it provides a way to grow infrastructure without taking on debt, due to the way UK accounting is done. Thirdly, public authorities are offered PFI credits by the central government and this acts as an incentive to choose a PPP for their infrastructure needs, rather than a public sector solution.

A November 2005 paper published by the Ontario Federation of Labor<sup>3</sup> asserted that the Private Finance Initiative deals worth £42.5 billion had been signed as of that date for 677 projects, with a cost to the government of £135 billion. According to the OFL, “one fifth of the United Kingdom’s public services, worth £60 billion, will be delivered by the private and voluntary sectors by the year 2006/07” (p. 17). A UNISON publication estimated in February 2006 that an additional £5.3 billion of projects were in the final stage of negotiations with a preferred bidder.<sup>4</sup>

According to European Investment Bank data, EBI investment in PPPs had so far been concentrated in the UK, which accounted for 24.4% of all PPP investments in the European Union up to 2003. PPPs are between 15% and 33% of total public investment in the UK.<sup>5</sup> Within the UK, 51% of PPP investments are in rail, nearly all in two large schemes, the London underground railway and the construction of the Channel Tunnel rail link; and 18% of UK PPPs investment is in schools and hospitals, through PFI initiatives for building or refurbishment.

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- 3 “Report of the OFL Delegation on the UK Experience with P3s”, November 2005.
  - 4 UNISON, “Overview of Public Private Partnerships in the UK”, Positively Public Briefing, February 2006.
  - 5 Public Services International Research Unit (SPIRU), “Background Paper on PPPs”, presented at EPSU Conference on Public-private partnerships and quality public services, May 9-10, 2005, p. 3. This document quotes the European Investment Bank as their source but has no specific citation.

## UNISON’s PPP Strategy

The union embraces what they call a “twin track” policy of opposing the country’s PFI policy overall while at the same time fighting to obtain the best terms they possibly can for their members when they are faced with a PPP that can’t be stopped.

The first track of UNISON’s twin-track strategy is their campaign to preserve as much infrastructure in the public sector as possible, fighting each and every PPP that is initiated. While fighting for legislative and regulatory reforms that protect their members, the union remains strongly committed to a stance that champions the public sector and condemns the Public Finance Initiative as contrary to the public interest. Their pro-public media campaign is called “Positively Public”. In opposing the PFI, the union has elicited the assistance of economists and auditors to analyze the finances of PPP contracts and whether they actually entail savings to the public. By engaging in an educated critique of the program, they have raised their credibility in public debate. They refer to their position as “evidence based”. The two tracks of their strategy are intertwined, as Marge Jaffe<sup>6</sup> explains, at the local (branch) level. “Our twin track strategy is very important. The more UNISON fought PPPs with our ‘Positively Public’ campaign, the more they have tried to buy us off with [good] contracts. Where branches wage a good campaign, in the end they get a better deal for their workforce”(Phone interview, October 2006).

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6 Marge Jaffe heads UNISON’s U.K. “Positively Public” Campaign.

In September, Dave Prentis, President of UNISON, stepped up the pressure at the annual Labor Party and Trades Union Congress (TUC) conferences. Unison's TUC motion called on Congress to "coordinate a major campaign to challenge the marketisation of the National Health Services and halt further expansion of private sector involvement."<sup>7</sup> According to an interview in the September issue of the online newsletter of [www.publicprivatefinance.com](http://www.publicprivatefinance.com), Prentis wants an assurance that UNISON will be far more involved in government policy-making, and a clear statement limiting the private sector's role in the health service. Gordon Blair, who will be the new Labor Party head, will need UNISON's support at election time. In Scotland, according to UNISON organizer Dave Watson<sup>8</sup> (telephone interview, October 2006), the union is pushing for a Labor Party position in their platform to "level the playing field". What this position entails is a call for grants or subsidies to public bodies that choose to use traditional public procurement for projects that are equal in size to those who choose the PFI option. Currently, there are "PFI credits" given for choosing PFI but not otherwise.

UNISON's second track is fought in the political arena to obtain favorable legislation and at the local level to take advantage of that legislation to get the best PPP contract possible for workers. The principle legislative and regulatory achievements were obtaining (a) protections that ensure that the compensation of new hires will be the same as that of transfers, (b) guarantees of union participation in the development and review of PPP contracts, (c) protections for pensions of public employees transferred to PPP employers, (d) a new legal ability of local authorities to borrow funds to fund infrastructure expansions themselves, and (e) the legal acceptance of a "Retention of Employment" model in National Health Service hospital PPPs whereby employees may choose to remain public employees to be seconded<sup>9</sup> to and work under the day-to-day control of the PPP service provider, but retaining all existing terms and conditions as public employees.

Another element of UNISON's strategy is to limit the scope of the contract regarding which groups of workers are transferred. In other words, they try to get as many classifications of workers out of the contract as possible, limiting the number of staff who transfers. Dave Watson described this "game plan" as having had a "50-50 success rate". A recent Treasury Department directive affirms that so-called "soft services", which include cleaning, catering and janitorial services, need not be transferred. This directive represents another step toward eliminating the transfer of public employees altogether. UNISON refers to this goal as "PFI without the people".

An important part of UNISON's strategy is to provide extensive training and assistance to their branches so they can mobilize branch leaders when a PPP bid is announced. There are significant opportunities for union involvement in the early stages of crafting the terms of a PPP request and evaluating bids and branch leaders need to know exactly what those opportunities are. They also must be well-versed in the methods for evaluating bids relative to the public sector alternative. Training materials are disseminated and available on the UNISON web site.

Additional details of UNISON's strategy can be found in Appendix 1.

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<sup>7</sup> [www.publicprivatefinance.com](http://www.publicprivatefinance.com), September newsletter (subscription).

<sup>8</sup> Dave Watson heads UNISON's Scotland "Positively Public" Campaign.

<sup>9</sup> Seconding refers to a legal assignment or "loan" of an employee of one employer to a second employer for a specified period of time.

## Case Studies

UK cases studies in this paper represent some best cases from the British perspective, as well as one ‘worst case’ – the Bedfordshire County Council case. These cases are all relatively recent. In all three cases of South Lanarkshire, Birmingham Hospital and Newcastle, the union worked with management to keep the work public. In these cases, an infrastructure expansion triggered a call for bids from the private sector under PFI regulations. With a more level playing field in place between private bidders and the public sector, due to a number of legislative reforms, these public authorities were able to prepare bids themselves that were chosen. Another case study describes the Retention of Employment model.

### CASE STUDY 1: Strategic Partnership – Bedfordshire County Council (A “Worst Case Scenario”)<sup>10</sup>

#### ***This project resulted in:***

- A two-tier wage system, brought about as union staff vacancies were left unfilled and non-union workers hired for newly created positions;
- No participation by the union in employment arrangements or ongoing management;
- The ultimate failure by the Company to deliver; and
- The termination of the contract by the Council, with a bill of £6.75 million to buy out the company

Under a 12 year £267m contract from June 2001 to modernize support services with Hyder Business Services Group Limited (HBS) (now owned by private equity group Terra Firma). 550 staff transferred from IT, finance, human resources, school support services, communications and the management of outsourced services.

UNISON campaigned for the council to keep IT services that would build council capacity, minimize risk and reliance on a single contractor, and provide better employment conditions and greater staff involvement but was unsuccessful in achieving that goal; the contract went to HBS.

UNISON concluded that the lessons from this experience were that (a) the trade union must take action before procurement starts; (b) must recruit and organize new PPP staff; (c) get the message across to councilors and trade union members about the limitations of PPPs; (d) ensure the PPP is democratically accountable and is fully monitored and scrutinized.

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<sup>10</sup> A longer version of this account was published by UNISON in its *Positively Public Briefing*, “Overview of Public Private Partnerships in the UK”, February 2006, p. 7

## CASE STUDY 2: The first Private Finance Initiative hospital where Support services are not transferred to the private sector<sup>11</sup>

***This project was a union success in that:***

- Unions developed strong relationships with the decision-making board; and
- All services were kept in-house based on a value determination.

A new £521 million, 1,200-bed super hospital and mental health unit is planned in Birmingham as part of the reconfiguration of hospital services and the improvement of clinical facilities in the city. A consortium by the name of Consort Healthcare were appointed preferred bidder for the project with a 35-year concession. Work on site was expected to start in the summer of 2005.

The trade unions had a strong relationship with the hospital board (trust) and were involved in the development of the PPP from the start. The trust decided to keep all the “soft” facilities management services in-house and is the first, large PFI hospital to do so. The trust and the unions visited other hospitals run by the preferred bidder and were not impressed. One hospital in particular, had serious problems of standards of service delivery. So the trust undertook detailed reviews of each service to ascertain whether an in-house service could meet the required standards and costs. They concluded that it would be better value for money to provide the services directly using the in-house teams.

## CASE STUDY 3: Newcastle City Council wins bid to keep services in-house

***This union success was characterized by:***

- High involvement by the union branch in the process from the beginning; and
- A successful campaign (part way into the process) to persuade the entire management to prepare an in-house bid.

In September 2002 Newcastle City Council Cabinet decided to accept a £250 million ten year Information Technology and Related Services (ITRS) in-house option and rejected a proposal from BT to establish a Joint Venture Company with the city council.

A year before, two companies BT and CSL were preparing bids. It was clear that the BT bid would be based on secondment to a joint venture company but CSL was proposing outsourcing. At this stage there was little evidence of the possibility of an in-house bid. When the city council refused to rule out an outsourcing option, 600 staff voted for strike action. An injunction was issued a few hours before the strike was due to begin, but many workers did not go to work. A week later, CLS withdrew from the procurement process.

Even though a BT contract would have preserved most union jobs, and terms and conditions are protected by legislation, the union pushed for an in-house bid rather than go along with BT. In doing so, they raised the issues of

<sup>11</sup> A longer version of this account was published by UNISON in its *Positively Public Briefing*, “Overview of Public Private Partnerships in the UK”, February 2006, p. 8.

the needs of service users and the future form and functioning of the city council. Their position on this PPP reflected their principled stand that a certain model of local government needs to be defended – one in which public goods and services are actually provided by government – rather than a model where government simply “enables” those services to be provided.

Lessons that UNISON has taken from this case are (a) the value of getting in-house bids mentioned and okayed as options in early notices that go out, (b) the importance of pushing for in-house bids rather than just accepting a PPP, (c) the importance of working closely with management to facilitate this option, but (d) also engaging in more confrontational actions to avert unacceptable bids.

## CASE STUDY 4: South Lanarkshire Council

### *This success in keeping all work in-house was marked by:*

- Good relations with management developed through a Labor-Management “Partnership Agreement”, the first in the education field in Scotland;
- The ability to demonstrate public sector efficiency, based on best-value model for providing public services offered competitively with private sector.

The Council<sup>12</sup> of South Lanarkshire entered into a £400 million secondary school modernization PPP agreement in 2006 in which no council employees were transferred to the private sector. The awarded consortium, InspirED, will build seventeen new schools and renovate two existing schools.

The July 2006 UNISON Scotland briefing, “Private Finance Illusion”, featured an article on the success of the South Lanarkshire UNISON Branch in convincing the council to keep cleaning, catering and janitorial services in-house. According to their Branch Secretary, Stephen Smellie, “This decision reflects the Partnership Agreement between the Council and the unions to develop services and protect jobs.” A Partnership Agreement is a codified labor-management agreement that sets up a joint problem-solving approach to ongoing bargaining.

When asked whether he thought this type of labor-management relationship might be more likely than a more traditional adversarial relationship to result in a good PPP outcome for labor, Dave Watson said he thought not. There have been other cases where a more traditional industrial relationships approach worked well. It depends on the union density in the industry and the level of member militancy, according to Watson. For example, one branch representing water works employees successfully kept their jobs public by “seconding” them to the new private partner. In their case, a strong campaign was waged where members “used their muscle”.

According to Watson, union involvement in reviewing and influencing the scope of the PPP at an early stage – such as occurred in South Lanarkshire – is also crucial, whether or not a branch has a Partnership Agreement. In this case, that level of collaboration worked in the union’s favor in persuading Council members early on to keep all soft services in-house.

Another element to South Lanarkshire’s success was their ability to demonstrate their own efficiency in providing school services through the public sector. In the UK, public services are subjected on a regular basis to efficiency testing to demonstrate “best value” – a benchmark to show you’ve got an efficient service. In this case, the Council

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<sup>12</sup> Councils are the units of local government in Scotland responsible for all local government functions. South Lanarkshire is one of 32 throughout Scotland.

successfully argued to the Scottish Executive that their Best Value approach demonstrated sufficient efficiencies that outsourcing would not be able to improve on it.

## CASE STUDY 5: Retention of Employment (ROE) at new National Health System Hospitals

### *The adoption by the government of the ROE model as an acceptable PPP option was a success*

- for UNISON’s political strategy within the Labor Party, and
- reflected their long-term goal of achieving a “PFI Without People”, since employees remain public workers, but
- has not been officially extended to other public authorities besides the NHS.

This “case” is actually a description of a model that has been applied at new hospitals being added to the National Health System. As of 2003, over 30 new NHS hospitals were under construction, due to the government’s commitment to the largest building program in the history of the NHS. These new hospitals were being funded through the Private Finance Initiative (PFI).<sup>13</sup> Under the PFI, clinical staff remained NHS employees, but until the ROE was adopted, non-clinical staff was transferred to the private sector.

Under the model, the privately financed, built and managed hospitals supervise public employees, using a detailed matrix of procedures for all phases of employment, including:

(a) selection of which employees will be directed by the private contractor, (b) recruitment of new staff during the contract period, (c) employment (existing employment terms and conditions, including discipline, are carried over to the Private Service Partner (PSP) unchanged), (d) dismissal – by the NHS, not the PSP, (e) transfers back, and (f) promotion.<sup>14</sup>

Unfortunately, the entire NHS is currently in a state of crisis due to spiraling deficits. At least 10 major hospitals face potential closure or diminished services; yet six new hospital PFI schemes are also being announced.<sup>15</sup> Four of the hospitals facing closure are run by the Pennine Acute Hospitals Trust, a PFI entity. They are facing a £21 million deficit. According to Allyson Pollock, Head of the International Center for Public Health Policy, “A large chunk of the current NHS trust deficits has been generated by the annual PFI charge and by unrealistic expectations about both the income and the savings that the schemes would generate.”<sup>16</sup>

<sup>13</sup> Most of the hospitals are currently in financial difficulty. See end of case study for details.

<sup>14</sup> 2003 UNISON Negotiating Guide, <http://www.unison.org.uk/acrobat/B935.pdf>; the matrix can be found in Appendix B.

<sup>15</sup> UNISON lists at least 40 hospitals facing major cutbacks and estimated job losses of up to 17 thousand.

<sup>16</sup> <http://society.guardian.co.uk/privatefinance/comment/0,,1695206,00.html>



## Public Private Partnerships in Canada

### Canadian labor law background

Four provinces in Canada have legislation providing for successor rights in the case of the transfer of a business or activity from federal to provincial jurisdiction. There are general successor rights in the Canada Labor Code that cover the transfer of activities from the federal authority to the private sector. However, in 2002 and 2003, comparable rights for provincial workers were lost in British Columbia and Ontario and partially lost in Quebec, though not without major labor struggles.

The labor movement's legal power in general has been reduced through anti-union legislation, including back-to-work legislation when the Canadian Union of Public Employees (CUPE) went on strike in British Columbia. At the same time, union mobilizations have reduced the extent of abrogation of these rights. These mobilizations resulted in limiting the number of people who can be laid off and limiting the amount of subcontracting.<sup>17</sup>

### Union density

OECD statistics<sup>18</sup> show that Canadian labor union membership has failed to grow significantly since 1983; as a result the density rate has steadily declined from 37 percent in 1983 to 30 percent in 2002.

### Status of Public-private partnerships in Canada

Canadian provincial governments are setting up independent, or 'arm's length,' bodies that are publicly funded, to facilitate and promote PPPs in their jurisdictions. In British Columbia and Quebec there are independent bodies, while other provinces are building their P3 promotion units right into infrastructure ministries.

According to a CUPE informant, however, there is "no huge momentum for P3s in Canada. The only provinces that have major P3s are Ontario and British Columbia" (Stan Marshall, telephone interview, October, 2006). This was corroborated by my other Canadian labor contacts.<sup>19</sup>

Provincial infrastructure funding for municipalities is conditional on trying P3s – the same as the UK's Public Finance Initiative.<sup>20</sup> However, if this is true, it's hard to explain why there continue to be relatively few P3s in Canada. Stan Marshall suggests that perhaps this is in part due to the effectiveness of CUPE's anti-privatization political action, but also the small size of their market compared to some other places.

Overall, CUPE has no twin-track strategy, but rather consistently opposes PPPs. However, local members at times have had success in working out acceptable PPPs when the alternative has been to shut down facilities completely.

<sup>17</sup> A more detailed account of recent developments can be found in Appendix 2.

<sup>18</sup> [http://stats.oecd.org/wbos/default.aspx?DatasetCode=U\\_D\\_D](http://stats.oecd.org/wbos/default.aspx?DatasetCode=U_D_D)

<sup>19</sup> Stan Marshall, Senior Research Officer, Canadian Union of Public Employees (CUPE); Pierre LaLiberte, Executive Assistant to the President, Federation des Travailleurs et Travailleuses du Quebec (FTQ) and Jordan Berger, Supervisor, Strategic Planning and Policy Development, Ontario Public Service Employees Union (OPSEU)

<sup>20</sup> Keith Reynolds, CUPE presentation to UNECE meeting, 2004)

## CANADIAN CASE STUDY 1: Teranet

### *This early example of union success:*

- represents what was possible prior to the weakening of labor laws in Canada,
- maintained the union contract and union representation,
- maintained union strength post-privatization by organizing new hires whose newly-defined jobs weren't in the existing bargaining unit,
- demonstrates how joint ventures can be an effective vehicle for retaining public control over the contract even after multiple changes of ownership and the sale of the public ownership share (if negotiated properly), and
- also represents the potentially positive repercussions for both workers and the government when a newly-private operation goes on to become very profitable.

This PPP transfer took place in 1991 from the Ontario Ministry of Consumer and Commercial Relations. Teranet at that time was owned 50-50 by the Ontario government and Teramira Holdings, Inc., a consortium of private sector investors and technology firms, including EDS Canada, Intergraph Canada, Ltd., KPMG, and SHL Systemhouse, Inc. In this partnership, Teranet was delegated responsibility for computerizing Ontario's land information data – 4.2 million parcels of land. Ontario contributed financial equity, set standards, and offered skills through the existing workforce, while the private sector partners provided “additional equity, access to research and development in new technologies; marketing skills and networks; and business management services and other expertise.” (p. 16)

The president of OPSEU Local 507, Charles O'Connor, confirmed in a phone interview the good experience of union members at this company.

One reason he cites is the fact that they were able to bring their union contract and union representation with them. In the mid-1990s, the Ontario government rescinded the legal right of successorship, and in later PPPs, workers lost their union representation.

Another reason for satisfaction is the success of this company, and its ability, based on that success, to offer generous compensation. Even so, the pensions that employees receive are defined contribution plans, while their public-sector pensions were defined-benefit plans. Employees are paid in part through a bonus system based on profitability. When Teranet went public, employees were offered the chance to buy up to \$20,000 worth of shares at \$10 per share before the IPO. So far this has proven to be no bargain, as shares remain below that price.

With success, Teranet grew. When the company was created, 67 people transferred in to form their workforce; at the time the Canadian Council article was written, there were 650 employees; currently there are 850. Out of those 850, 400 are union members. According to O'Connor, “As the workforce grew – which it did substantially – management fought to keep new people out of the union by saying they had substantially different jobs and therefore didn't belong in the [bargaining unit]. Our recognition is tied with the type of work. We've been in court over who is in and who isn't many times. When we lost (in arbitration) the right to include scanners in the union, we just organized them!” (Interview, October 2006)

Although Teranet began as a joint venture, Ontario eventually sold its half to a private company called Altamira. Then Teramira Holdings, Inc. bought it all. At the time of the sale by Ontario in 2003, the deal was valued at £370 million and Ontario was cash-strapped, according to an online article of [globeandmail.com](http://globeandmail.com)<sup>21</sup> Teramira, according to the online technology news webpage, [itbusiness.ca](http://itbusiness.ca), “is headed by Montreal financier Eric Baker, and backed by several of the country's largest pension funds. These include the pension plans of the CBC, Hospitals of Ontario, McGill University and Montreal police. Under the terms of the 2003 sale, Ontario has a veto on any Teranet sale through to August 2006. The province also regulates the fees Teranet charges and retained the right to regulate fees for a certain period after any future sale.”<sup>22</sup> It also retained the right to take 50 per cent of the rise in Teranet's value should it be resold.

Macquarie made a £2.1 billion bid for Teranet in 2005, but tabled the bid, with speculation that Ontario's government was not yet satisfied with the terms: “The

<sup>21</sup> [www.globbeadvisor.com/servlet/Articlenews/story/gam/20060331/RREGULY31](http://www.globbeadvisor.com/servlet/Articlenews/story/gam/20060331/RREGULY31)

<sup>22</sup> <http://itbusiness.workopolis.com/servlet/Content/fasttrack/20050729/RTERANET29?sect>

holdup was Ontario's new Liberal government. It couldn't decide on the most appropriate sales structure. The government knew that boosting Teranet's fees was the best way to boost its value. But doing so would make the Liberals look like total hypocrites; they had been highly critical of the fees charged by Highway 407, the privatized highway that ranks among the most expensive toll road on the planet." (Globeandmail.com)

Teranet's March 2006 Income Trust IPO was valued at £700 million. The government needed a deal before its right to a part of the profits expired. This deal, however, seems to have protected the public interest while creating much-needed income for the government. According to Ontario's Department of Finance,<sup>23</sup> a number of conditions were agreed to: (a) the Province will receive its payment in cash, to the extent sufficient cash is generated through the IPO; (b) the Province retains complete control over statutory fees; and (c) service improvements and enhancements will be made to the system.

## CANADIAN CASE STUDY 2: Bruce Nuclear Reactor

### *This successful PPP experience shows:*

- how a proactive union stance that is favorable to a PPP can provide a foundation for significantly influencing the choice of partners and terms of the partnership, and
- how one element within that strategy may include seeking an equity share for the union, but
- this experience also shows the difficulties that a union local faces when their local survival strategies for their members run counter to the anti-privatization stance of their national union.

In September 1999, Ontario Power Generation (OPG) issued "expressions of interest" for private equity options in the Bruce Nuclear facilities, which consist of eight nuclear reactors that generate 3,140 megawatts of electricity.

A lease agreement with British Energy, the UK's largest private electricity generator, was approved by the Ontario

Government in July 2000. The agreement involves an 18 year lease between OPG and Bruce Power for the Bruce A and B plants as well as the purchase of inventory. Bruce Power is a separate operating company set up for the deal, with 95% ownership from British Energy and 5% equity from the two main unions at the site – the Power Workers' Union and The Society of Energy Professionals.<sup>24</sup>

The Power Workers' Union (PWU) is Local 1000 of the Canadian Union of Public Employees (CUPE), who fought hard against the PPP. Unlike UNISON in the UK, which has a twin-track strategy, CUPE's single strategy is to oppose PPPs. They have not developed strategies to assist their locals in obtaining the best deals they can, according to Stan Marshall, CUPE Senior Research Officer (Telephone interview, October 2006). This deal was therefore entered into by the local without support from the national union. However, when PWU originally merged into CUPE, they had retained their decision-making autonomy, so they were able to craft their own strategy.

In the 2005 publication, *Flawed, Failed, Abandoned: 100 P3s – Canadian & International Evidence*<sup>25</sup>, to which CUPE contributed, the Bruce Nuclear P3 is categorized as "flawed" due to high costs and poor risk transfer. However, the Power Workers Union sees things differently.

In 1997, Ontario Hydro declared there were serious issues with the province's nineteen operating nuclear stations. This led to a series of public hearings, and word got to the union that one strategy under consideration would be to shut down seven of the nineteen plants and begin moving members to different parts of the province to do the shutdown. Three units at the Bruce site would have been shut down under this plan and 1500 workers would have been transferred to Toronto where other decommissioned plants were scheduled to be rehabilitated first. Bruce is located in a rural area and is perhaps the main employer in that area. The shutdown would have had a devastating effect on the local communities.

Having learned this, the Power Workers Union took matters into their own hands. They took advantage of opportunities to make presentations at local hearings and chose to advocate a PPP as the best solution. They had noted that Ontario Hydro had argued that their main

<sup>23</sup> <http://www.fin.gov.on.ca/english/media/2006/fo05-teranet.html>

<sup>24</sup> The Canadian Council for Public Private Partnerships, *Selected Public-Private Partnerships across Canada*, p. 96.

<sup>25</sup> Mehra, Natalie, Ontario Health Coalition, *Flawed, Failed, Abandoned: 100 P3s – Canadian & International Evidence*, March 2005.

problem was a lack of adequate management capabilities to keep all plants open. Using that point, the union suggested that this was a case where outside management capabilities needed to be brought in.

The union did not believe that Bruce would ever be reopened under the rehabilitation plan that was being presented and a PPP seemed like the only hope.

As the PPP initiative was pursued, the union “got right into the process” of meeting with prospective partners. “When all the companies came to look, PWU got to spend a day with each one of them. We treated it like we were picking a partner.”<sup>26</sup> The union chose to pursue a share of equity in the private partner as a way to show they were interested and confident in the company – they “wanted skin in the game.” (Menard interview)

When British Energy, the original partner, went bankrupt in England, a new partner took over that is a fully Canadian consortium that includes a public sector pension plan. They immediately began the process of starting up two of four plants that were shut down, and they are getting a contract to rebuild the other two within the next five years. This will mean additional jobs. So instead of communities dying, they face a very positive future.

During this same time frame, the PWU has grown through a vigorous organizing agenda to a membership of 15,000. Part of that organizing was at newly formed electric generation and distribution companies that came into existence as utility deregulation went forward in Ontario. Originally, PWU fought deregulation under the first term of Conservatives in Ontario government. But when the Conservatives were reelected, it became obvious that deregulation was going forward. The PWU was able to offer the benefits of affiliation with a strong union in an uncertain restructuring environment. In this environment, as in the crisis at Ontario Hydro, the PWU sought ways to prosper in difficult circumstances, something they have managed to do quite well.

For several years after the Bruce Power PPP, the PWU tried unsuccessfully to have organized labor accept the pragmatic decisions the union made to protect its members through alterations to anti-PPP resolutions at national labor conventions. Bob Menard remembers attending a number of union conventions during this period of time, in which all he heard were condemnations. Menard’s point of view is different: “Hospitals, schools, water – yes, be cautious. But we needed something else for our members. We never could convince them.”

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<sup>26</sup> Bob Menard, PWU Staff Officer, Telephone interview, October 31, 2006

## Public Private Partnerships in Australia

### Labor Law

According to Greg McLean,<sup>27</sup> there used to be successorship rights for workers whose employer's ownership changed hands and the ability to challenge infractions before a judicial body, but those rights were eliminated under new labor laws. There are also no laws that guarantee union inclusion in the consultative process preceding the granting of PPP contracts. As in the UK, Australian labor law provides no guarantees of a union shop. However, when they bargain a contract, it's registered with courts and applies to all workers in a bargaining unit, whether or not they are members. According to McLean, [An anti-union employer] can try to pick off [new hires or non-members] one at a time so they work under individual contracts, but if the union has strength on the ground this won't happen.

### Union Density

The last year (2002) that OECD labor density statistics are posted for Australia, there were 1,834,000 union members and a workforce of 7,998,000 – a 30% rate of density. Going back we find a long term drop between 1983 and 2002 from 50% to 30%. Not only has the density dropped, the actual number of union members also dropped from a high of 3,053,000 in 1990.<sup>28</sup>

### Status of PPPs in Australia

The Australian Council for Infrastructure Development has estimated that there have been more than 170 PPPs signed in Australia, worth more than \$32 billion and stretching back 20 years.<sup>29</sup> According to Professor Ken Whitshire, "Around 10 per cent of new infrastructure projects are currently designated as PPPs and this . . . will rise to 50 per cent over the next five years."<sup>30</sup> Examples of PPP infrastructure projects since 2000 include Sydney's Orbital road network, nine public schools in northwest Sydney, Queensland's Gateway Bridge and Motorway project, Sydney Airport Rail Link, Brisbane Airport Rail Link, Melbourne's Spencer St. Station and the City Link motorway. What is new in this growth, according to an Australian union policy paper, "is the speed with which PPPs have become central mechanisms for providing and managing infrastructure in a number of advanced economies, and in the provision of services in such sectors as education, health and transport" (Strategic Economics, p. 5).

State Labor governments in Australia have embraced PPPs for such things as road and rail infrastructure, tunnels, schools, hospitals, water and sewage projects, telecommunications and sporting facilities. All states have policies and special units established to promote PPPs, and all of them set out criteria for assessing the provision of infrastructure through conventional means of public financing compared to the use of PPPs. There is no similar federal policy.

<sup>27</sup> Telephone interview, Asst. National Secretary, Australian Services Union.

<sup>28</sup> [http://stats.oecd.org/wbos/default.aspx?DatasetCode=U\\_D\\_D](http://stats.oecd.org/wbos/default.aspx?DatasetCode=U_D_D) A shift in data source for union membership after 1996 results in an interruption in the time series.

<sup>29</sup> Quoted in Strategic Economics, *Paying for Private Profit: a Review of the Public Private Partnership Model in the Provision of Community Infrastructure and Services*, a Union policy project of the Rail, Tram & Bus Union, Australian Education Union, Australian Nursing Federation and Community and Public Sector Union – SPSE Group, August 2003, p. 5.

<sup>30</sup> Australian Financial Review, 23 May 2003, quoted in Strategic Economics, *Paying for Private Profit: a Review of the Public Private Partnership Model in the Provision of Community Infrastructure and Services*, a Union policy project of the Rail, Tram & Bus Union, Australian Education Union, Australian Nursing Federation and Community and Public Sector Union – SPSE Group, August 2003, p. 7.

## Labor PPP Strategy

In 2005, the Australian Labor Party began an Official Inquiry into the financing and provision of Australian infrastructure, to which the Australian Congress of Trade Unions and several individual unions submitted a position paper.<sup>31</sup> McLean described the ASU position in this way: “We have no problem with ‘turn key’ operations”, where the private sector designs and builds a facility, then turns it over to the public sector which is responsible for the day-to-day operation. Viola, a French company, came in and built three sewerage plants at Port Macquarie for the Council, but now day to day operations are by our members. That’s a model we’re comfortable with.”

“On the other hand,” according to McLean, “PPPs are a little like colonialism, when infrastructure is built by a foreign country and you’ll be sending a revenue stream back to that country for years. We’d like to have large financial institutions – like CALPERS – invest directly in the public sector infrastructure in such a way that the public sector retains ownership and public administration.”<sup>31</sup> McLean notes that PPP policy must also address the rapidly developing secondary market in infrastructure leases, the refinancing of ownership of spun-off infrastructure by private equity firms.

## AUSTRALIAN CASE STUDY 1: The Newcastle Mater Hospital Project

*In this PPP, unions representing workers at this hospital were able to bargain an agreement that:*

- Allowed all workers to remain Government employees, though under private management,
- Including both health care and “back of the house” service jobs, and
- Maintaining working rights and conditions.

The New South Wales government entered into a Labor Services Agreement and an Interim Agreement that were negotiated in relation to the Newcastle Mater Hospital. The Labor Services Agreement provided that all non-managerial staff would remain New South Wales Health employees. The Agreement governed the terms on which selected employees would be placed under the management of the private consortium and its sub-contractors. In addition to the clinical staff, who always were expected to remain employees of the Department of Health, so-called “back of house services”, including cleaning and food preparation were also agreed to remain as public employees of the Department of Health. As a result, all of their rights and conditions were protected.

According to Bob McGregor, Deputy Director-General, Department of Health of New South Wales, “We have no issues around superannuation [pensions], union membership and different rates of pay because they are all in the same award. The unions do not formally accept that because they do have an issue around PPPs generally, but we have had extensive negotiations with the Trades and Labor Council and the health unions here, and learning again from the experience of Port Macquarie where there was a lot of staff dissatisfaction about the arrangements there, I believe we have actually struck an ideal model.”<sup>32</sup>

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**31** Currently an ALP Committee on PPPs has been formed that includes several trade union representatives – one from the Australian Services Union (ASU), Greg McLean, and John Sutton, National Secretary of the Construction, Forestry, Mining and Energy Union (CFMEU).

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**32** Mr. Bob McGregor, Deputy Director-General, Department of Health, Transcript of Evidence for the New South Wales Legislative Assembly Public Accounts Committee Inquiry into Public-Private Partnerships, 17 February 2006, p. 10.

## AUSTRALIAN CASE STUDY 2: Bega Valley Council

### *This successful PPP outcome:*

- Attached labor standards to a local project,
- Was achieved through pressure at the city council level,
- Scaled back the scope of the original PPP, and
- Retained union representation, collective bargaining and the current contract.

Bega Valley is a rural area on the seaboard – a pleasant place where many people retire. But in 2001, the administrator in charge of the Bega Valley Shire Council announced he would be seeking a public private partnership to renovate five sewerage treatment plants, install new sewerage systems in five villages and run the area’s fresh water services. This announcement met with a backlash from the community and opposition from the Australian Services Union through its local MEU Branch.<sup>33</sup> The administrator had been appointed after earlier Council leaders were fired for financial malfeasance and stepped into a situation where PPP grants had already been received by the Council and commitments made to go this route. Despite this, a series of well-attended town meetings, organized by ASU-MEU as part of a public campaign to stop the project, succeeded in modifying the results to the benefit of existing union members and the community.

In addition to their public campaign, pressure was also exerted through approaching state government officials. A union delegation met with the New South Wales Minister for Land and Water Resources over the use of State Government provided funds by the Council. Union members demanded that an examination take place of a full range of proposals for sewerage plant construction. At that meeting they also sought an assurance that the current maintenance/construction budget for water services would be utilized by the Council. Following these actions, the project was scaled back to cover only waste services projects, leaving the valley’s fresh water distribution system in public hands. And the Council signed a letter with the union guaranteeing the retention of union representation and their existing collective agreement<sup>34</sup>

<sup>33</sup> “Water workers oppose privatization”, [www.asu.asn.au/media/utilities\\_water/20010904\\_privatisation.html](http://www.asu.asn.au/media/utilities_water/20010904_privatisation.html)

<sup>34</sup> Interview, Greg McLean, Assistant National Secretary, Australian Services Union (ASU), October 2006.



## Public Private Partnerships in Ireland

### Union Density

Ireland's union density has followed the same downward trajectory as those in many industrialized countries as a global economy has taken hold. Between 1994 and 2004, union membership in Ireland rose by around 20%, but union density as a proportion of all employees fell from 46% to 35%, with private sector union density now standing at around 21% and public sector union density in the region of 80%.<sup>35</sup> The combination of job losses in large traditional unionized manufacturing plants and the fact that many new employers, both national and multinational, are refusing to recognize unions has meant that unions are finding it very difficult to retain current density levels. In addition to these problems, Tony Dobbins, an Irish industrial relations specialist lists the following "formidable challenges" that the Irish union movement faces: "the proliferation of smaller more fragmented workplaces, which are more time-consuming to organize; the growth in so-called atypical transient jobs and employment contracts; lower interest in voluntary efforts outside work, on which unions depend heavily; a lack of contact between younger people and trade unions; and a general drift in society towards greater individualism and consumerism."

### Labor Law

Ireland's labor law has been closely tied to European Union directives since 1973 when Ireland became a member. The European Social Charter protects the right to organize and addresses the right to bargain collectively. Although the Charter has not yet been "transcribed" into Irish law, the trade union movement has "received assurances from Government that it will be signed up to by Ireland."<sup>36</sup> The EU Regulation, Safeguarding of Employees' Rights on the Transfer of Undertakings Regulation SI 306, issued in 1980, protects Irish employees' labor rights as well as terms and conditions of work on the transfer of a business from one owner to another and the transfer of an establishment from the public to private sector (p. 3, SIPTU)

An earlier source of Irish labor law was English labor law. Like the UK, Irish labor law does not authorize "union shops" and like UK unions, Irish trade unions have a so-called "voluntarist" tradition of attaining agreements through shop-floor actions rather than collectively bargained contracts. Unlike the UK, however, Ireland has a national Social Partnership made up of unions, employers and farmers that was initiated in 1982. This has furthered union power at the national level: Irish unions engage in centralized bargaining while a strong Irish Council of Trade Unions participates, as the labor partner, in the establishment of national economic plans.

### Status of PPPs

Ireland is maintaining a somewhat stronger commitment to the retention of purely public infrastructure and services than the United Kingdom, though not in all sectors. According to the Irish Congress of Trade Unions,

"The amount allocated for PPP represents only a small proportion of the overall capital expenditure for the period between 2005 and 2009. In this period the entire capital spent by government in the Republic of Ireland will be £36 billion; the total for PPPs will be £2.36 billion. This is different than the situation in the UK including Northern Ireland. Under the Private Finance Initiative it is mandatory for public agencies to consider the involvement of the public sector through a PPP arrangement for all infrastructure projects."<sup>37</sup>

<sup>35</sup> Dobbins, Tony, "Union Density Declines to Around a Third", European Industrial Relations Observatory On-Line (EIRO), October 20, 2005, <http://www.eiro.eurofound.eu.int/2005/10/feature/ie051'0201f.html>

<sup>36</sup> Service, Industrial, Professional, and Technical Union (SIPTU), "The Irish Legal System and Labour Law – An Overview", <http://www.siptu.ie/YourRights/TUFGuideToLabourLaw/TheIrishLegalSystemLabourLaw>

<sup>37</sup> "Guidelines for Unions on Consultations with State Agencies and Public Authorities in the Republic of Ireland Concerning Public Private Partnerships", Irish Congress of Trade Unions, <http://www.ictu.ie/html/publications/ictu/Congress%20Guidelines%20for%20Unions%20on%20PPPs%20May%2005.pdf>

A document on the Irish PPP web page, [www.ppp.ie.gov](http://www.ppp.ie.gov), “Irish PPP project updates” lists 67 PPP projects and their current status. This list doesn’t include projects that are complete and operating, like the well-known examples of the National Maritime College of Ireland and the West-Link bridge on M50 motorway in Dublin

## Union PPP Strategy

Trade union representatives who sit on the national steering committee as part of the Irish social partnership system are “on board with PPPs”<sup>38</sup> as is the steering committee as a whole. In their position on the steering committee, they have been able to obtain certain protections and guidelines favorable to unions. For example, Irish regulations emphasize early consultation with employees and their representatives. Quoting from the Framework for PPP Stakeholder Consultation,<sup>39</sup> this ICTU document lists these provisions:

- “Public service employees should be informed at the earliest possible stage of proposals and of significant developments throughout the process.
- Consultations should occur at a point which allows enough time for employees to gain information about any proposed changes in their working arrangements and to give feedback before any decision is made.
- Existing structures and agreement should be used to ensure extensive consultation and open communication in respect of PPP projects.<sup>40</sup> State authorities should inform the relevant trade unions of their intention to place the matter on the agenda of the local partnership committee

According to Paul Sweeney, Economic Advisor to the Irish Congress of Trade Unions (ICTU), “I sat on

[the steering committee] but Liam Benney is our current representative. While I was on it I was unhappy at a lack of both health and safety policies and a union recognition policy. But Liam has more or less achieved the union recognition since he’s been there.”

This high-level participation doesn’t mean that the ICTU fully embraces PPPs as unequivocally good. They are rather taking a pragmatic course, and trying to steer policy toward a selective use of PPPs. They understand, according to Sweeney, that PPPs are generally quite expensive. Furthermore, they are aware that, due to a strong economy, the government can afford to take on debt itself without turning to the private sector. However, the political reality is that “even Labor Party leaders think PPPs are great”. Furthermore, they are seen as offering something valuable when they provide something in addition to what the state is doing. “Then we don’t oppose it,” says Sweeney. “Suppose that, in Los Angeles, the private sector says, ‘we’ll build a world class metro system’, why would you oppose it, when the public sector is not going to do it?”

In addition to setting policy at the state level, the ICTU sees the importance of negotiations by unions at the local level. The ICTU has provided a list of “key issues for unions” to address in the consultation process. These are quoted below:

- “The union will be satisfied that a PPP arrangement is the best way of proceeding taking into account broad social and environmental criteria and economic criteria.”
- “The union will obviously demand assurances that existing levels of pay and the working and employment conditions of its members are safeguarded into the future and that all protections contained in existing collective agreements are maintained following the introduction of PPP arrangements.”
- “The union will also seek assurances concerning staff placement, grading promotional opportunities and future work reporting arrangements.”
- “The project should be the subject of a risk assessment process which should reassure staff that proper health, safety and environmental standards are maintained.”

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**38** Paul Sweeney, Economic Advisor to the Irish Congress of Trade Unions, telephone interview, Nov. 1, 2006

**39** This document is linked to the official government website [www.ppp.gov.ie](http://www.ppp.gov.ie) for their Central PPP Policy Unit: <http://www.ppp.gov.ie/keydocs/guidance/central/Stakeholder%20Consultation%20for%20Employees%20and%20their%20Representatives.doc>

**40** These are defined as formal partnership agreements and forums established under the Programme for Prosperity and Fairness, not collective bargaining agreements.

- “The union will wish to ensure that the pay and conditions of any new employees, including those to be employed by a contractor, will be on par with trade union norms in the sector *and that the appropriate union will be facilitated in recruiting such staff into membership* (my emphasis). The union should seek to have these type of provisions inserted into the contract specification.”
- “The union and Congress should also have regard for the social impact of any changes proposed during the consultation process. This may involve consideration of the impact on local communities especially with regard to social exclusion, equality and disadvantage. This is particularly important where new service charges are being contemplated that might adversely affect low-income groups.”

From these recommendations, it is clear that there are no guarantees in Irish PPP regulations that the private service provider will support an organizing drive among its (new) workforce nor agree in advance that its workers will be represented by the union that currently represents public sector workers who work for related departments. However, the regulations *do* specifically require consulting with unions that represent affected public employees with ample lead time. This, in turn, gives the union time to formulate a response.

## IRISH CASE STUDY 1: Conned/LUAS

### ***This successful union PPP experience included:***

- Bargaining a closed shop agreement (somewhat rare in Irish labor relations),
- With highly competitive salaries, and
- A promise of union recognition for workers on future lines/future construction;
- And was achieved through top-level negotiations as well as local campaigning.

In light of Irish labor law, it is interesting to note that Connex (now Violia), the company that won the bid to operate and maintain a new light rail line for the city of Dublin, entered into a closed shop agreement with the Service, Industrial, Professional and Technical Workers Union (SIPTU), the union representing Ireland’s transport workers. This agreement has been criticized by leftists who object to the resulting contract for including a no-strike clause, supposedly the first ever for SIPTU.<sup>41</sup> When asked about this clause, Paul Sweeney, who worked for SIPTU before going to the ICTU, remarked that they have no-strike clauses in a number of contracts, though “you don’t take them too seriously!”

This contract also made them the best paid “tram” workers throughout Europe, according to another news story.<sup>42</sup> This agreement is important for several reasons. First, it will expand to cover more transport workers when Violia builds and operates more light rail lines as the Dublin light rail system grows. Secondly, it could be that this agreement will serve as a labor relations model for other PPPs, assuming that contracts incorporate similar harsh government penalties for service disruptions. Under these conditions, labor peace may be paramount for investors, far more important than labor costs.

Anti-union ideology may obscure self-interest for private partners, for a time, however. Besides LUAS, PPPs were entered into for Dublin bus operation, waste collection, and the airport shuttle. Originally, these PPPs were non-union, but with all three SIPTU eventually got an agreement. This was due both to labor’s role in the social partnership, but also action at the local level.

<sup>41</sup> <http://www.eurofound.eu.int/2003/11/inbrief/ie0311202n.html>

<sup>42</sup> [http://www.unison.ie/irish\\_independent/stories.php3?ca=9&si=1068291&issue\\_id=9960&printer=1](http://www.unison.ie/irish_independent/stories.php3?ca=9&si=1068291&issue_id=9960&printer=1)

## IRISH CASE STUDY 2: GAMA Construction (a “worst case” study)

### *This Irish PPP experience:*

- Demonstrates the challenges involved in protecting immigrant union members who come to work for multinational companies who receive PPP contracts, and
- While revealing the initial failure of this union to protect these workers, also suggests that the later actions of that union could hopefully represent the kind of steps that ultimately will help grow a globalized labor movement

When it comes to unions’ role in PPPs in Ireland, “our biggest failing was a huge contract to GAMA, a Turkish company” according to Paul Sweeney, of the Service, Industrial, Professional and Technical Workers Union (SIPTU). SIPTU represented GAMA workers, both Turkish and Irish. In 2005, not only did GAMA Construction have a PPP contract to build a power plant in Tynagh in County Galway, they had contracts at a number of sites in Dublin for various infrastructure projects, including public housing and roads.<sup>43</sup> They had won numerous bids “on their ability to finish these projects at half the cost of native Irish companies and in some cases in half the time usually expected. This of course raised eyebrows in the construction industry ... Allegations began to spread about worker exploitation.”<sup>44</sup>

In March, news stories began appearing that the Turkish workers that GAMA had brought to Ireland were being paid at a substantially lower rate than Irish workers, and were not even receiving all of their reduced wages. One member of the Dail, Joe Higgins, accused the company of not only paying their Turkish workers less, but withholding part of their wages and transferring the money to accounts in the Netherlands without the workers’ knowledge. GAMA admitted there were some “errors” in pay rates, with an average of 8% of salaries being withheld. But these weren’t minor glitches – it turned out that up to 800 workers had their pay withheld. The money that was withheld amounted to as much as 30 million euros, and was put in accounts in the Netherlands. Sweeney reckoned “they sent their pay offshore to avoid taxes.” Turkish workers were “in receipt of payment rates of 2.3 Euro per hour and working up to 80 or 90 hours a week” while Irish workers were receiving 12.96 Euro per hour.<sup>45</sup>

With support from SIPTU, hundreds of Turkish workers gained the courage to hold a series of demonstrations, occupations, strikes and marches over the course of several weeks, at construction sites in Dublin and at Tynagh and outside the Dail. Still, SIPTU’s actions came late and were overshadowed, at least in the eyes of the public, by the strong advocacy provided by Socialist Party’s Joe Higgins in the Irish Dail. Commentators wondered “What exactly was their trade union doing for them?”

One film review of the documentary, “The GAMA Strike: a Victory for All Workers” commented, “[Seeing] some of the GAMA workers themselves speak of unity and a common struggle between people in Ireland and Turkey ... was a joy to behold.”

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<sup>43</sup> Indymedia Ireland, <http://www.indymedia.ie/article/69273>

<sup>44</sup> Indymedia Ireland, “Film Review: The GAMA Strike”, <http://www.indymedia.ie/article/77562>

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<sup>45</sup> RTE News, <http://www.rte.ie/news/2005/0405/gama.html>

## Discussion and Conclusions

The many country by country differences in political, legal and labor relations environments have clearly influenced unions to pursue different strategies vis-à-vis public private partnerships. In all cases, however, unions – particularly public sector unions – have found themselves faced with contradictions. On the one hand, they are committed to preserving a strong public sector on principle, and have seen through pro-market ideology to recognize real problems with PPPs: the higher ultimate cost to the public and the likelihood that risk is never adequately transferred to the private sector, leaving government ultimately responsible for rescuing failed deals. On the other hand, they have generally recognized the need to accommodate to situations, usually at the local level, where public private partnerships are going forward and members' jobs and compensation need to be protected.

In the UK, the momentum of the Public Finance Initiative was such that UNISON had no choice but to find pragmatic means to protect their members. Because a Labor Party has been in power since 1997, even though it is “New Labour” and has embraced PPPs, UNISON has been able to pursue a political strategy to influence the laws and regulations that govern the way PPP contracts are entered into and evaluated and that govern what happens to public sector workers under those contracts. In addition, European Union regulations provided protections for the last twenty years for transferred workers, guaranteeing that union membership and contracts are transferred and compensation remains the same (though pensions were not protected until new legislation was passed). ***UNISON's strategy has always been coupled with overall opposition to public private partnerships and the promotion of government as a superior provider of public services.***

From the UK case studies, I believe we can appreciate (a) the importance of a political strategy under even a mildly pro-union center-left political leadership; (b) the importance of embracing workplace reforms to ensure that the public sector can demonstrate efficiency comparable to the private sector; (c) the usefulness of labor-management collaboration within the public sector to lay the groundwork for successful competition to keep services public (through in-house bidding); (d) the importance of what might be regarded as details of the PPP contracting process, including the criteria used to select bids, how 'public sector comparators' are calculated, and how the public service vehicle is structured – and the need for unions to have access to the specialist knowledge necessary to understand these matters so they can be players in the PPP process.

In Australia and Canada, Conservatives are in power at the national level, though Australia does have Labor Parties who are in power at the state level; as a result, unions have had much less power to influence

regulations governing the PPP process as a way to protect members. Generally the Australian Services Union pursues local campaigns to mobilize communities against PPPs in order to achieve sufficient leverage to negotiate member protections into the commercial contracts. ***The Australian Congress of Trade Unions, meanwhile, endorses large-scale PPP projects, provided they are needed. They also call for the use of pension funds for direct investment in public sector infrastructure development without the intermediate vehicles of public private partnerships.*** Australian national elections take place this year, so a change in political leadership could result in movement in these directions. Meanwhile, the Australian Services Union is working with Labor Parties at the state level to try to get guidelines on procurement policies to include various performance aspects, including a good labor relations record.

The Australian experience allows us to see union responses in an environment that more closely resembles our own. A long-term goal in the U.S. could be to achieve state-level

regulations on procurement criteria, as Australians are currently seeking, rather than just city-wide Responsible Contractor regulations. However, Australian union strategy has few successes yet that can be regarded as models. The ACTU call for alternative financing for infrastructure development is interesting, but progress on that front will likely require a political shift to the left.

In Canada, the main public sector union, the Canadian Union of Public Employees (CUPE), has pursued an unequivocal anti-PPP public stance. The Ontario Public Services Employees Union (OPSEU) takes a similar position. Because the momentum of PPP adoption has been slow, they have not developed policies for protecting their members who are faced with transfer to the private sector other than waging strong campaigns to stop each PPP. Nevertheless, individual cases demonstrate that there are positive outcomes possible. In the Teranet case this was due to now-rescinded laws ensuring successorship, combined with a particular joint venture structure that gave the government ongoing control

even after they sold their share *and* that enriched the government substantially. In the case of Bruce Power, the union local worked with management to actually take the lead in pushing for a PPP, obtaining a virtual partnership status in the contracting process and a four percent equity share in the company. While successorship rights were also important in this case, the embrace by the union of the PPP agenda positioned them well to benefit from the deal. Both these cases offer instructive examples of how financial structure can matter, as well as a pro-active collaborative stance by the union.

Ireland's example is unique in being characterized by a social partnership at the national level. There, unions are on board with PPPs through their participation on the national steering committee. Through this participation, they are able to shape the direction of government policy regarding adoption of PPPs, and influence partners to observe union recognition regulations whose enforcement would otherwise be difficult. Although we are not likely to have such a partnership in the U.S. during our lifetimes, one could at least imagine meaningful union participation on state-level infrastructure development policy committees under friendly state political leadership as beneficial to actual PPP outcomes for union members in that state.

From many of the cases, it appears that private partners are quite willing to enter into agreements with unions that allow for generous compensation and continued union recognition. The case of SIPTU's LUAS contract in Dublin, Ireland brings the issue of industrial peace to the forefront, but investors in many cases appear ready to pay well and accept unions when they believe they achieve stability in return. In the opinion of OPSEU's Jordan Berger, "The private sector doesn't care about labor costs. Large institutional investors don't care about labor savings as a way to cut costs – they would rather just include labor in the cost of their bid. It requires a million dollars or more just to prepare a bid – given that, investors want political stability and predictability. . . . In Ontario, the electrical "P3" was stopped and that sent out ripples in the investment world. There *should* be an incentive for bureaucrats to take controversy out of the model."<sup>46</sup>

The creation of pressure through local campaigns continues to be a part of union strategy in every country and almost every case reviewed, even where state and national regulations are in place to protect workers, due to shortfalls in enforcement. However, they are less central to union strategy when legal challenges provide another course of action to achieve fair treatment for transferred workers.

In the long run, unions may find it draining to put up huge fights over every major PPP that comes their way, and investors will wish to avoid this scenario as well. As pointed out by Paul Sweeney, PPPs may offer net gains to society when they allow the development of needed infrastructure that would not otherwise be built. A union policy that strategically selects undesirable projects for large, visible anti-PPP battles, coupled with a set of strategies to position itself favorably in other more socially beneficial PPPs will emerge stronger at the end of the day. Those strategies should include a political component at whatever levels of government offer opportunities to develop statutory and regulatory protections for members and the community so that PPPs that do go forward will be fair, transparent and in the best interest of all stakeholders.

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<sup>46</sup> Telephone interview, October 2006.

## Appendix 1

This history of the struggle of the U.K.'s largest public sector union, UNISON, to protect public sector workers who face transfer through PPPs, to eliminate “two tier” workplaces and to slow the entire process of privatization in the UK was chronicled in a paper written in 2005 by Marcy Cohen, then a researcher for *Policy Alternatives Canada*. It is based on a series of in-depth interviews with Marge Jaffe, UNISON’s point person for their “Positively Public” campaign. This is her paper. Marcy Cohen can currently be reached at [MCohen@heu.org](mailto:MCohen@heu.org)

### Thatcher’s Legacy

In the 1980’s Thatcher began by removing union protections for workers and selling state assets.<sup>47</sup> She then went on to contract-out the “non-core” services in the public sector (e.g. cleaners and messenger), and issued a decree requiring that “non-core, domestic” services in health must be “market tested.”

### The European Union Framework

The counterweight to Thatcher was the EU rules on procurement. The EU requirement that the bidding processes should be standardized and “transparent,” and that successorship rules (i.e. the acquired right directive) should apply, became the minimum level of protection with contracting-out.

This resulted in a gradual shift to the two tier workforce. Many UNISON branches were not in position or were not inclined to fight for these workers, the workforce became very fragmented, union membership fell and wages and working condition plummeted.

### The Labour Government

From 1997 on, UNISON and other unions pressured the Labour government to end the two tier wages. By 2001, Tony Blair was on record as saying that they did not support the two tier work wage force, and that he did not want privatization to proceed at the expense of the workers.

### Local Government

It was five years after Labour was elected that the legislation related to competitive tendering for local government changed and facilitated even greater movement to privatization. However, it later created a space that UNISON took advantage of for improving quality of work for new hires.

Building on that notion, in 2003 UNISON succeeded in leveraging it to improve the quality of work under PPPs. They pressured for a change in the legislation to include “best code of practice on workforce matters.” It included an agreement that new hires would get wages and working conditions more or less equivalent to the people transferred from the public service. It also included a mechanism to provide new hires with access to a pension benefits.<sup>48</sup>

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<sup>47</sup> Until it was abolished by the Thatcher government in 1983, Britain had a successful Fair Wages Resolution. It required companies contracting with public authorities to pay the going rate for the trade or industry, based on terms agreed in national collective agreements. The UK was also a signatory to International Labor Organization (ILO) Convention 94 which stipulated that public contracts should include clauses ensuring the workers concerned had wages and other conditions “no less favourable than those established for work of the same character”. <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C094>, Article 2, page 7. As a precondition to privatization the Thatcher government renounced ILO Convention 94 and abolished the Fair Wages Resolution.

<sup>48</sup> In addition, it provided more specific regulations on the duty of local authorities to consult trade unions and provide full disclosure of information on all matters affecting the workforce

## Public Finance Initiative

Simultaneously, unions fought PPPs at the institutional level. In 1997 600 workers at Dudley hospital in the West Midlands refused to be privatized and managed to sustain industrial action for six months. In the end they were privatized. But government fears that UNISON would replicate this action across the country led to negotiations with the government and the establishment of a “retention of employment agreement” in 1999-2000.<sup>49</sup> Under this model it stipulates that in five trades – cleaning, catering, laundry, ground maintenance and portering – the workers remain NHS employees with all their terms and conditions in tact. These workers are then seconded to the private contractor and are managed by the contractors. These same conditions (i.e. NHS employment terms and conditions) apply to all the new hires as well. It is a very complex process to negotiate and as a result they have slowed down the process for PFI approvals. And although these conditions just apply to five trades, in some Trusts (i.e. Manchester), they have been extended to apply to staff that will be managed by the private contractor.

In addition, because UNISON was very effective at two successive Labour Party Conferences in getting all unions and the majority of constituents to support a motion calling for a review of the PFI, they were asked to participate in direct negotiations with Treasury in 2002-03. During those negotiations the Treasury agreed that “soft” services do not have to be included in PFI projects and that evaluations of the PFI proposals **should not** hinge on the lower wages that could be paid to support staff overtime. The idea that PFI evaluation process can not presume lower wages for support staff has been “hard wired” into the guidelines.

The first PFI Hospital that does not include health support staff was recently approved. It is the Birmingham PFI project.<sup>50</sup>

## The Warrick Agreement

Prior to the most recent election in 2004, the unions and the Labour government had discussion in which the government agreed that if they were elected again that would fulfill certain promises. One of the promises was to extend the “best value code of practice statute beyond local government to all of government.” However, even though they have agreed to this, the actual terms of the agreements have to be negotiated department by department. In addition, higher education, further education, academy schools, independent health treatment centres, and semi-public companies are excluded from the agreement.

## The NHS Agenda for Change Agreement

UNISON has just negotiated a very comprehensive agreement with the NHS that includes new job structures and pay grades, and opportunities for staff mobility and training. The NHS agrees that the contractors will have to abide by the “Agenda for Change” agreement, and they are asking contractors to show good will and implement these agreements on their own prior to re-negotiating their contracts with their individual Trusts. This brings UNISON very close to its goals of establishing the same wages and employment conditions for contracted staff as for in-house staff.

## New Privatization Initiatives

The new public infrastructure needs have shifted to primary care services for NHS Trusts and primary and secondary schools (with renovations to be done by the public sector and new builds by P3’s). The procurement for this new infrastructure is to be organized on a national level by PUK (itself a p3) and the relevant department (i.e. health or education). The idea is to avoid past problems with Trust and Local Authorities managing the procurement process for p3’s.

The structure of this initiative is yet another iteration of p3’s. Local companies will develop these projects with 70% of these companies in health and 80% in schools privately owned. 10% will be owned by the local authority for schools and 15% by the local Trust for primary care. The remaining share will be held by PUK and the relevant national department.

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<sup>49</sup> Included as a case study in this paper.

<sup>50</sup> Included as a case study in this paper.

### ***Is this an End to Privatization?***

I asked Margie two questions: how and why the private contractors were willing continue since they can no longer profit from low wages and poor working conditions, and secondly, why governments want to contract-out when they can no longer be assured of any cost savings. She made the following points:

- Many of these transnational companies are quite flexible and can adjust to different labour regimes. In Denmark, for example, ISS provides good wages and working conditions because these are the expectations.
- Some Trusts and other government agencies are bringing services back in-house and UNISON is developing a booklet on how to do this.
- Labour under Blair remains firmly committed to privatization. They have bought into the ideology and representatives from these corporations have access to the highest levels of government.
- Some local governments and departments have now accustomed to doing business in this way.

## Appendix 2: Canadian Labor law/ Labor Relations in Recent Decades

Four provinces in Canada have legislation providing for successor rights in the case of the transfer of a business or activity from federal to provincial jurisdiction. There are general successor rights in the Canada Labor Code that cover the transfer of activities from the federal authority to the private sector. In a 2001 publication of the Canadian Council for Public-Private Partnerships, four provinces were listed as having successor rights provisions that apply to civil servants: British Columbia, Manitoba, Quebec and Saskatchewan. However, since the time of that publication, this list has been shortened.

In 2002 in British Columbia, Bill 29, *The Health and Social Services Delivery Improvement Act* “shredded legally negotiated collective agreements in this sector, regardless of job protection language” according to a Public Sector International paper.<sup>51</sup> According to a British Columbia CUPE researcher, Keith Reynolds,

Thousands of them were laid off and replaced by people making 40% less money. They also lost their right to successorship. Subsequently, when remaining members of the union involved went into bargaining, the provincial government introduced legislation again. When the union went on strike the government introduced back-to-work legislation. The legislation not only ended the strike, but it provided for the layoff of thousands more workers and 15 percent retroactive pay cut. The province came within a hair’s breadth of a general strike as workers from all sectors walked out in support of the health services employees. In the end, the province finally conceded a limit to the additional workers who would lose their jobs to the PPP model.<sup>52</sup>

In Quebec, there are partial successorship rights. Those rights were abridged by an amendment in 2003 to Article 45 of the Quebec Labor Code. This amendment “increased the margin of maneuver of companies. Now, although the ‘central element’ of a company must be staffed by transferred workers with union representation intact, private contractors have the right to subcontract portions of work considered non-central.”<sup>53</sup> There was a huge union mobilization against this legislation that forced a compromise. The original legislation would have allowed unlimited subcontracting. Now locals try to negotiate a clause in their contracts to prevent the new subcontracting possibilities from being utilized.

In Ontario, private sector unions have successor rights by law (Berger, telephone interview, October, 2006). However, public sector unions lost those rights in the mid-1990s. They are now trying to get this law reinstated and they also bargain this into individual labor contracts. Public sector employees outside provincial and municipal government (e.g., hospital employees, teachers, police officers, and fire-fighters) are also covered by their own specific legislation.

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**51** Public Services International, “Developments in Privatization of Public Services”, presented at the PSI Workshop on Trade Union Responses to New Forms of Privatization, March 14-16, 2006, Ottawa, Canada, p. 8.

**52** Reynolds, Keith, “Notes for a Presentation to the United Nations Economic Commission for Europe”, Toronto, Canada, November 24, 2004, p. 3.

**53** Pierre LaLiberte, Executive Assistant to the President, Federation des Travailleurs et Travailleuses du Quebec (FTQ).telephone interview, October 25, 2006.

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## Endnotes

<sup>i</sup> This position echoes the position taken by other unions in a joint paper published by Strategic Economics. This report suggests a number of alternative means of funding new infrastructure, including the use of pension (“superannuation”) funds:

Much of the funding for PPPs in Australia can be ultimately sourced to superannuation funds, usually through an intermediary such as a specialized infrastructure or property trust. There is no financial reason why governments could not establish investment opportunities for larger projects directly with the market rather than through an intermediary, thereby reducing the project costs. Superannuation funds in turn are looking for secure longer-term investments. There are some examples of Australian super funds developing such policies. The Local Authorities Super Fund in Victoria has a target of a percentage of its investment funds to be invested in regional infrastructure. The Construction and Building Unions Superannuation Fund has pioneered an asset allocation policy directed towards the housing construction sector. Once again, the facilitative role of government is crucial if these opportunities are to be realized, as governments are the only bodies able to establish the framework within which these opportunities can be captured.

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