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CURRENT ISSUES: PROJECT LABOR AGREEMENTS



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Owner/Contractor Interests

- Labor Supply
- Timely completion
- Quality, Efficiency, Economy
- No Strikes
- Without lingering liabilities
- Without effects beyond project
- Political

Union Concerns

- Work preservation
- Trade jurisdiction
- Integrity of local agreements/preserve area standards

Common Concerns

- Legality/enforceability – is it valid under NLRA § 8(e) or 8(f)?
- PUBLIC SECTOR- May need a foundational showing that a PLA will serve the public interest (financially, ensure labor supply, etc.) and will not violate public bidding laws.

Conditions For Agreement To Become Effective

- Usually signed by all unions associated with the local building trades council.
- Should agreement be effective if one or more of the local unions ultimately refuse to sign?

What is a PLA?

PLA = Project Labor Agreement a/k/a Community Workforce Agreement.

1. Labor agreement between;
2. Labor organization; and
3. Employer in the construction industry- Possible challenge: Developer is not an “employer in the construction industry” Developer not necessarily skilled in negotiations for a PLA, contractor is perhaps better suited. No leverage where it is mandated.

Labor organization= usually means the local Building Trades Council and its constituent local unions.

Project Specific Agreement = Usually agreement between one employer and one union.

Use of PLA's on direct public contracts or public assisted or funded contracts can be controversial and lead to legal challenges. Have the parties appropriately accounted for the risks? What if the PLA is struck down?

Incorporates The Local Union Agreements

Incorporates local agreements except as modified in the PLA.

- Which form of local agreement? Association vs. Independent?
Heavy vs. Building or Other?
- If a PLA is mandated, Unions may have little incentive to negotiate changes to the local agreement, etc.
- Is an Owner/Developer properly suited to negotiate a PLA? Valid?
- Can/should the PLA be negotiated pre-bid?
- Should there be a structure which incentivized Union's to be flexible?
- Will people actually work at reduced rates?

Pre Hire, Versus “9(A)”

- Pre hire - Agreement can be terminated at expiration without obligation to engage in bargaining for a successor agreement under NLRA.
- Beware of language which creates “9(a)” relationship-agreement continues, indefinitely. Parties must bargain in good faith for a successor agreement.
- Clearly state that only a 8(f) relationship is being created.

Scope of the PLA

- Be clear about what work the PLA includes: If it is included, then the benefits of the PLA will apply.
- If it is excluded, then the benefits of the PLA will not apply: economic concessions, no strike protections.
- If it's covered, then it must be assigned in accordance with the PLA.

Scope of PLA: Exclusions

- Work that is later removed from GC's scope.
- Movement of materials/debris to, from, across the jobsite.
- What about specialty/artisan work.
- Tenant work covered.
- Proprietary systems.
- Prefabricated work.
- MWDBE contractors.

Common Exclusions

- Offsite work.
- All non-construction trade work.
- Pre-construction

What Contractors Can Work On The Job: Possible Scenarios

1. Only contractors which are already signatory to local agreement?
2. Contractors which may or may not be signatory to the local agreement, but which contractors which agree to abide by the PLA for the duration of the project.

Under 1 or 2, all work is performed “union” and the local agreement applies to such work.

Jersey City ordinance- Only contractors with a federally approved apprentice training program- essentially only union contractors.

3. Possible exclusion for specialty work, MWBE contractors-
 - a) Don't need to be signatory to the local union agreement, but
 - b) must abide by the local agreement in whole or in part.

What about specialty work that the unions are not best suited to perform?

What Workers Can Work On The Job?

Most typical: Only workers referred from the union hiring hall.

Variation – Certain contractors (MWBE contractors or “Specialty Contractors”)

- Can keep their “core staff” but must otherwise use only labor from the hiring hall; or
- Can hire their own workers but must otherwise abide by the local agreement; or
- Exclusion from participation in union benefits plans.

No Strike Clause

- Must contain a definition of prohibited conduct, and an expedited process for obtaining, through arbitration, a “back to work order.”
- Bar workers who violate no-strike clause
- Beware of exclusions to the no strike commitment.
- Must waive rights under the Norris-LaGuardia Act which prohibit a federal court from issuing an injunction in a labor dispute.

Jurisdictional Disputes

- Usually resolved by National Plan, or alternative.
- Ensure that all trades are bound to JDR plan.
- No damages for incorrect assignment of work.

Grievance Arbitration

- Unified process for all trades and contractors.
- Supersede the local agreements.

GC Collection of Fund Contribution Delinquencies

- GC to withhold payment upon notice of fund delinquencies.
- Limit the delinquency period (90 days prior to notice)
- Withhold payment until dispute is resolved: set forth dispute resolution process.
- State GC has no financial liability.

Miscellaneous

- Unify start/quit times; shifts; holidays, etc.
- Any wage/benefit concessions. (Unless prevailing wage applies.)
- Define emergency work suspension.
- Reference any drug testing, safety or other policies or procedures applicable to the project.
- What about terms of suspect regional area-wide projects?

When Does the PLA End?

- When work is turned over-should be clearly defined.
- What about tenant work?
- What about punch list or subsequent remedial work?
- Temporary Services

Derivative Liability

- For unpaid wages or fund contributions?
- For prevailing wage law violations?
- For withdrawal liability?
- Joint employer liability?
- Other.