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**PROJECT LABOR AGREEMENTS
A CHECKLIST OF COMMON ISSUES**

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PROJECT LABOR AGREEMENTS
A CHECKLIST OF COMMON ISSUES

The traditional Project Labor Agreement, or PLA, is typically prepared by a Building Trades Council, or BTC, for and on behalf of its affiliated unions. The Project Owner is generally a party to the PLA, and, depending on the “bargaining power” of the Owner, the terms of the PLA will reflect the Owner’s desire for a smooth project without disruptions from labor or the BTC’s desire to protect the various interests of its affiliated unions.

PLAs are used on private construction projects and public works projects. They are used on building construction projects as well as road construction projects. Depending on the “political” climate in one’s geographic area and organized labor’s ability to “influence” the Owners of construction projects, the use of PLAs will vary.

The purpose of this paper is to identify common issues that appear in PLAs so that the practitioner or contractor can bid on a project governed by a PLA with some degree of knowledge of the consequences.

Scope of Agreement.

The PLA should specify that it applies to a specific project of definite duration, if possible referenced by a project or RFQ number with the name of the Owner and a clear description of the job in question. Anything less specific should be questioned lest the BTC claim that a contractor performing work on the project is bound by the terms of the PLA and of the various collective bargaining agreements for other projects.

The PLA must only apply to work performed on-site, including site preparation work and dedicated off-site work, or it may be an unlawful Section 8(e) agreement.

Priority of PLA over Other Labor Agreements

The PLA should specify that the terms and conditions of the PLA supersede and override the terms and conditions of any other national, area or local collective bargaining agreements. If exceptions are noted, the contractor must verify that the exceptions are not problematic.

To Which Labor Agreements is the Contractor Bound?

A “Letter of Assent” referencing the collective bargaining agreements of the unions affiliated with the BTC is often attached to the PLA, and the contractor is expected to execute it. However, the PLA may specify that the contractor need not be bound by agreements with unions with which it does not have a present relationship or provide other exceptions to the contractor’s stated obligation to be bound. These PLA provisions must be reviewed carefully, especially if the contractor has particular work assignment or collective bargaining history traditions.

Typically, a union “recognition” clause will be included. The contractor should assure that any union “recognition” is for the PROJECT ONLY and for the particular craft in question.

What About Fringe Benefits?

The PLA will typically require the contractor to agree to or to execute participation agreements for fringe benefit funds. These provisions must be carefully reviewed so that the contractor not be obligated to contribute to any such funds that are not necessary to the contractor and that the contractor’s obligation to contribute to such funds is not extended beyond the duration of the project.

Work That Extends Beyond Expiration of a Collective Bargaining Agreement

With several collective bargaining agreements in effect during a project, it is possible if not likely that some of the agreements may expire during the course of the project. The PLA

should specify whether the wages and fringes in effect when the job is bid will remain in effect post-expiration or, if not, how and when new wages and fringes will go into effect.

Binding Effect of PLA

The PLA should specify that it is not binding on parents, affiliates, or subsidiaries of the contractor (i.e. dual shops are safe). A more interesting question is the binding effect of the PLA on non-signatory union affiliates. Indeed, a strong argument can be made that, without uniform and unanimous participation by ALL the trades, a PLA is essentially worthless in achieving its stated objectives of jobsite harmony and efficiency.

Administration

PLAs may specify that pre-job conferences and job status reports are required. In most cases, these provisions cause the contractor to incur a significant amount of administrative expense and burden. Most of these provisions are designed to protect the jurisdictions of the craft unions, even though it is often stated that the provisions are designed to prevent the occurrence of jurisdictional disputes. The contractor must be cognizant of requirements such as providing reports of planned activities for the project, the actual and projected numbers of craft employees required on the project or for portions of the project and other burdensome, speculative matters.

Standardized Work Rules and Hours of Work

The PLA should provide for standard hours of work, including overtime, shifts and holidays. Lunch or supper hours should be specified to provide for maximum efficiency. Saturday, Sunday or holiday hours should also be standardized. The PLA should specify that its provisions supercede the provisions of individual labor agreements with respect to these issues.

Employment under the PLA should begin and end at the project site. The issues of crew foremen, stewards and daily supervision should be addressed in the PLA.

Safety

PLAs often include provisions apportioning the responsibility of the general contractor or subcontractors for the assurance of safe working conditions. The contractor should review these provisions carefully to determine potential liability under the OSH Act or MSH Act.

Grievances

The PLA should contain a provision governing disputes and grievances and barring picketing or work stoppages pending resolution of the disputes and grievances. In reviewing these provisions, the contractor must note the timelines for the filing of grievances, providing answers and demanding arbitration (assuming binding arbitration rather than an adjustment board is specified). If the grievance involves a subcontractor, the general contractor and Owner may have standing to participate in the grievance process, and the PLA should so specify.

Jurisdictional Disputes

The process for resolving jurisdictional disputes is generally separate and apart from the general grievance resolution procedure. From the contractor's perspective, the typical PLA's procedures for resolving jurisdictional disputes are designed to favor union interests in "jurisdiction" over the contractor's interest in assigning work as historically assigned or as economically efficient. The "factors" to be considered in the resolution of the jurisdictional dispute are important. Expect to see "decisions of record," area past practice and agreements of the unions as controlling factors. Expect to see the contractor's preference or economy/efficiency of operations at the bottom of the list of factors.

The PLA should specify that the contractor's original assignment should remain in effect until set aside by the resolution procedure, and it should further specify that the contractor has no financial obligation for an improper work assignment.

Many PLAs provide that a union's failure to follow the agreed procedures for resolving jurisdictional disputes will subject the union to substantial liquidated damages. Typically, the BTC is absolved from any liability for the liquidated damages.

Work Stoppages and Lockouts

The PLA should contain provisions banning strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason. After all, from the Owner's perspective, this is one of the BTC's selling points for the PLA. The BTC and unions are expected to disclaim any responsibility or liability for "wildcat" activities. Often the PLA will specify an alternative procedure for resolution (rather than resort to the courts) which could include arbitration, expedited arbitration, limited submissions to the arbitrator(s) and liquidated damages provisions against the union which violates the provision.