

**A Guide to Provisions of Project Labor Agreements**

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**This is a draft of a book on Project Labor Agreements. We are pleased to share this incomplete draft with you but please do not cite or quote this.**

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### **Introduction**

Project Labor Agreements (PLAs) are a part of the construction lexicon that is often spoken about, but not necessarily understood. Most of the papers and articles on PLAs have focused on either/both legal and economic ‘pros and cons’ of these agreements. This work has been written to provide a better understanding of the kinds of provisions that are found in PLAs across the United States and common variations in contract language associated with these provisions.

The term Project Labor Agreement itself often has dual meanings. For the purpose of this work, a PLA is an agreement between an owner (of real property) with the construction trades unions that all bidders (contractors) must agree to as part of the bid for a construction contract on the project. The bidders need not be signatory to any other collective bargaining agreement and the provisions apply to all contractors (and sub-contractors) on the project. A private owner or public owner of a project may enter into a PLA under United States law.

As of this writing, the ability of public owners to consider the use of a PLA is constrained by Executive Order ##### issued by President George W. Bush in 20??, which restricts the use of PLAs on federally-funded projects. In addition, in some cases, state and federal courts have interpreted public bidding statutes to restrict the use of PLAs. [See Appendix ‘B’ at the end of this work for key legal citations.]

At various times, constructors already under contract by an owner may sign a project specific labor agreement with construction trades. The constructor may be working under a design/build, construction manager/build or general contractor form of contract with the owner. These agreements- often referred to as site labor agreements- are NOT the subject of this work although the provisions of these agreements may be similar to PLAs. [See Appendix ‘E’ at the end of this work for some interesting recent uses of site labor agreements by constructors.]

This book has four main chapters and five appendices. The first three chapters- scope and exclusions, project administration, economic adjustments to local agreements- have been primarily written by John Spavins with each of the other three authors contributing additional examples of contract language. The fourth chapter on dispute resolution is primarily the work of Matthew Bodah. The five appendices is each the work of a co-author: history (Belman), legal citations (Bodah), choosing a PLA negotiation team (Spavins), PLA pros and cons and Site Labor Agreements (Phillips).

The intention of the authors is to better inform the reader as to the nature and complexity of Project Labor Agreements. Warning- this is ***NOT*** a ‘how to write a PLA’ handbook. Discussion of the ‘legalese’ of PLAs—such as separability clauses—have not been included for this reason. (Also, none of the four authors is an attorney.) [See Appendix ‘C’ on advise to owners on choosing a PLA negotiation team.]

## **Chapter I – Scope and Exclusions**

A Project Labor Agreement must define the project, by which we mean both the scope and length of the project. For example, if a bridge is covered by the project, are any new highways leading to the bridge covered as well? If some additional work is required after a structure is turned over to an owner, is that work to be done under the provisions of the PLA or not?

The project is also defined by stating what work and which workers are not covered by the PLA. For example, the owner must define the non-building trades workers who are necessary to the advancement of the project who may be on-site during construction. This is particularly important since the unions’ privity of contract includes the owner in a PLA where normally the union(s) privities of contract is with the contractor(s) and not the owner.

Considerations: If the project has multiple phases- with distinct ‘down time’ between phases- is the PLA only for the first phase? Does the PLA end with the initial use [occupancy] by the owner—or some other time? Is work under the guarantee of the contractor(s) part of the PLA? Are there any ‘dedicated off-site locations’ - such as a package concrete plant- that are part of the PLA?

Typical exclusions include at a minimum: owner’s employees, public utility personnel, lab testing staff, construction management (CM) office and professional staff. There may also be provisions for manufacturers’ employees for initial testing of building plant and equipment. Further exclusions may be sought where non-building equipment needs to be installed during construction. (This might occur with large processing equipment in an industrial plant or large scientific or medical equipment in a laboratory or health care project site.)

An example of scope and exclusion language from the PLA for the Rockland County (NY) Courthouse, Phase I:

### Article III- SCOPE OF THE AGREEMENT

This Project work covered by this Agreement shall be defined and limited by the following sections of this Article.

#### SECTION 1. THE WORK

This Agreement shall only apply to the following on-site construction and repair work performed on the Rockland County Courthouse during the time period of this Agreement:

The "Project" is additions and alterations to and rehabilitation of the County of Rockland Courthouse, and associated demolition work, site work and modifications to certain existing structures at the County of Rockland Government Center, New City, New York, in general conformance with the Owner's request for proposals, the Owner's Construction Program set forth in the Court Facilities Capital Plan of August 1989, amended March 1993, and Construction Manager's proposal dated March 15, 1994, which are made a part hereof, by reference, and in accordance with Contract Documents.

"On-site" construction and repair work in connection with the above shall be defined to include Project work performed at preparation and staging areas located within 15 miles of the Project site.

#### SECTION 2. TIME LIMITATIONS

This Agreement shall be further limited to Project work performed under County construction contracts awarded after the effective date of this Agreement, and performed prior to the termination date of this Agreement. This Agreement, together with all of its provisions, shall remain in effect for all Project work bid, but not completed, by December 31, 2001. If the Project described above is not bid by December 31, 2001, the Agreement may be extended by mutual agreement of the parties.

#### SECTION 3. EXCLUDED EMPLOYEES

The following persons are not subject to the provisions of this Agreement even though performing work on the Project:

- 1) Superintendents, supervisors (excluding general forepersons specifically covered by a craft's Schedule A), engineers, inspectors and testers, quality control/assurance personnel, timekeepers, mail carriers, office worker, messengers, guards, technicians, non-manual employees, and all professional, engineering, architectural, administrative and management persons;
- 2) Employees of the County, or of any State agency, authority or entity or employees of any municipality or other public employer;
- 3) Employees engaged in on-site equipment warranty work;
- 4) Employees engaged in laboratory or specialty testing or inspections;
- 5) Employees engaged in ancillary Project work performed by third parties, such as electric utilities companies, gas utilities, telephone operating companies, and railroads.

#### SECTION 4. NON-APPLICATION TO CERTAIN ENTITIES

This Agreement shall not apply to the parent company, affiliates, subsidiaries, or other joint or sole ventures of any Contractor which does not perform work at this Project. For the purposes of this agreement only, this Agreement does not have the effect of creating any joint employment, single employer or alter ego status among County, Construction Manager and/or any Contractor. Nothing contained herein shall be construed to prohibit or restrict the County or its employees or any other state authority, agency or entity and its employees from performing on or off-site work related to the Project. As the contracts which comprise the Project work are completed and accepted, the Agreement shall not have further force or effect on such items or areas, except where inspections, additions, repairs, modifications, check-out and/or warranty work are assigned, in writing (with a copy to the Local Union involved) by the Construction Manager for performance under the terms of this Agreement.

To provide a further illustration, consider the following language from the Boston Harbor wastewater treatment PLA:

Such Project is generally described as the construction of:

- 1) Primary, secondary and residual wastewater treatment facilities on Deer Island;
- 2) Head works on Nut Island;
- 3) A tunnel under Boston Harbor from Nut Island to Deer Island;
- 4) An outflow tunnel eastward in the Atlantic Ocean from Deer Island, including the installation of diffusers;

- 5) Related facilities which include, as necessary,
  - a. Site preparation, demolition and/or rehabilitation of facilities now located on the site;
  - b. Designated materials and personnel loading and unloading and staging sites dedicated to the Project;
  - c. Transportation systems in and around the Harbor for personnel and materials; and
  - d. Installation of materials necessary for the Authority's Deer Island facilities, not otherwise undertaken by public or private utility organizations, in the town of Winthrop.
- 6) The interim and permanent sludge treatment plants at FSRA; and
- 7) New construction/rehabilitation work for the Authority's current operating facilities on Deer Island and Nut Island awarded after the effective date of this Agreement.

...

Section 5. This agreement shall be limited to work historically recognized as construction work, including, specifically, the site preparation and related demolition work necessary to prepare the site for construction and such rehabilitation of existing facilities as is directed by the Authority. Nothing contained herein shall be construed to prohibit, restrict, or interfere with the performance of any other operation, work or function which may occur in or around the project or be associated with the development of the Project, or with the ongoing operations of the Massachusetts Water Resources Authority.

Section 6. Items specifically excluded from the scope of this Agreement include, but are not limited to, the following:

- A. Work of non-manual employees, including but not limited to, superintendents, supervisors, staff engineers, surveyors (except were expressly covered by a current local Collective Bargaining Agreement which forms the basis for a Schedule A or B), inspectors, quality control personnel, quality assurance personnel, timekeepers, mail carriers, clerks, office workers, including messengers, guards, emergency medical and first aid technicians, and other professional, engineering, administrative, supervisory, and management employees.
- B. Equipment and machinery owned or controlled and operated by the Authority
- C. All off-site handling of materials, equipment or machinery and all deliveries to and from the Project site.
- D. All employees of the Authority, and all employees of the Project Contractor or Contractor not performing manual labor.
- E. Any work performed on or near, or leading to or into, the Project site by state, county, city or other governmental bodies, or their Contractors; and/or by the Authority, or its Contractors (for work which is not part of the Project).
- F. Off-site maintenance on leased equipment and on-site supervision of such work.
- G. Off-site warranty functions and warranty work, and on-site supervision of such work.
- H. Exploratory geophysical testing and boring both on-land and off-shore, except where expressly covered by a current Collective Bargaining Agreement which forms the basis of Schedule A or B.
- I. Laboratory or specialty testing or inspections not ordinarily done by the crafts.

Section 7. None of the provisions of this Project Labor Agreement shall apply to the Massachusetts Water Authority and nothing contained herein shall be construed to prohibit or restrict the Authority or its employees from performing work not covered by this Agreement on the Project site...

A Nevada PLA provides a good illustration of the importance of defining the duration of the project.

ARTICLE XVIII  
DURATION OF AGREEMENT

The Project Labor Agreement shall be effective on the date approved by the [owner], the Union and the General Contractor and shall continue until final acceptance, as defined in Section 1(b) of this Article, of the Project construction work described in Article II hereof.

Section I:

- (a) Turnover. Construction of any phase, portion, section or segment of the Project shall be deemed complete when such phase, portion, section or segment has been turned over to the Owner by the Contractor and the Owner has accepted such phase, portion, section or segment. As areas and systems of the Project are inspected and construction tested and/or approved by the Construction Manager and accepted by the Owner or third parties with approval of the Owner, the Agreement shall have no further force or effect on such items or areas, except when the Contractor is directed by the Construction Manager or Owner to engage in repairs or modifications required by its contract(s) with the Owner or Construction Manager.
- (b) Notice. Notice of each final acceptance received by the General Contractor and/or Contractor will be provided to the Union with a description of what portion, segment, etc. has been accepted. Final acceptance may be subject to a 'punch list', and in such case, the Agreement will continue to apply to each such item on the list until it is completed to the satisfaction of the Owner and Notice of Acceptance is given by the Owner to the General Contractor and/or Contractor.
- (c) Termination. Final Termination of all obligations, rights and liabilities and disagreements shall occur upon receipt by the Union of a notice from the General Contractor or the Owner saying that no work remains within the scope of the Agreement for the General Contractor or its successor.
- (d) Releases/Waivers. Any and all releases and/or waivers shall be provided to the Owner.

## **Chapter II – Project Administration of Labor**

All PLAs contain various provisions for labor administration during the project. Some of these provisions are often similar to local collective bargaining agreements but are codified in the PLA to avoid confusion and to provide a unified system across all trades throughout the project.

### **A. No Strike/No Lockout**

A fundamental provision of all PLAs is that the project under the PLA forms a 'separate world' from the labor conflicts that might occur in the locality during the project. All locals must work even when they may have a strike in the locality for a new contract. Provisions of the expired agreement will hold on the PLA site – where applicable- until a new local agreement is in place. Similarly, contractors may not lockout trades on the

project with a PLA regardless of employer association agreements in the project area. Related, open shop contractors working under a PLA are not subject to an organizing boycott on the PLA site.

Some no-strike/no-lockout agreements are broader than others. A substantial minority of PLAs do allow unions to withhold labor if a contractor is delinquent in its payments to health care or pension funds. However, there may be limits on the job action allowed. A Minnesota PLA, for example, stated that unions may withhold labor for non-payment to benefits' funds "provided such withholding of services shall not be accompanied by picketing, hand billing, or advising the public of the existence of a labor dispute against a delinquent employer."

The no-strike/no lockout provisions of PLAs leads to the need for dispute resolution provisions to be discussed in Chapter IV.

An example of no-strike/no lockout language is found in the PLA for the Tappan Zee Bridge:

#### SECTION 1. NO STRIKES-NO LOCK OUT

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, hand billing, demonstrations or other disruptive activity at the Project for any reason by any Union or employee against any Contractor or employer while performing work at the Project. There shall be no other Union, or concerted or employee activity which disrupts or interferes with the operation of the Tappan Zee Bridge or the free flow of traffic thereon. Failure of any Union or employee to cross any picket line established by any union, signatory or non-signatory to this Agreement, or the picket or demonstration line of any other organization, at or in proximity of the Project site is a violation of this Article. There shall be no lockout at the Project by any signatory Contractor. Contractors and Unions shall take all steps necessary to ensure compliance with this Section 1 and to ensure uninterrupted construction and the free flow of traffic across the Tappan Zee Bridge for the duration of this Agreement.

#### SECTION 2. DISCHARGE FOR VIOLATION

A Contractor may discharge any employee violating Section 1 above, and any such employee will not be eligible thereafter for referral under this Agreement for a period of 100 days.

#### SECTION 3. NOTIFICATION

If a Contractor contends that any Union has violated this Article, it will notify the appropriate district or area council of the Local Union involved advising of such fact, with copies of the notification to the Local Union, the Department and the NYS Council. The district or area council, and the Department, and the NYS Council shall each instruct, order and otherwise use their best efforts to cause the employees, and/or the Local Unions to immediately cease and desist from any violation of this Article. A district or area council, or the NYS Council or the BCTD Department complying with these obligations shall not be liable for the unauthorized acts of a Local Union or its members.

(Special note: The Tappan Zee PLA will be cited several times in Chapters II and III as well as in appendix 'B'. The Tappan Zee Bridge is part of the NY State Thruway and spans the Hudson River between Westchester and Rockland counties. The NY State Court of Appeals' 'Tappan Zee' decision is the key case law for public owners in New York and the language of this PLA is often used in New York.)

## **B. Union Recognition- Referral – Dues and/or Agency Fee-Core Personnel Provisions**

The building trades become the exclusive employee representative of construction workers on the PLA site. All union members pay union dues according to the specific local agreement (referred to collectively as Schedule A or Appendix A of the PLA). The contractors agree to accept union referrals for employment opportunities. (PLAs were originally referred to as ‘pre-hire agreements’—see Appendix ‘A’ on the history and evolution of PLAs.). Except in so-called “right-to-work” states, any non-union trade workers pay an agency fee generally equal to union dues. (The ability of non-union workers to obtain employment generally relate to the ‘core/drag’ provisions to be discussed in Chapter III. Non-union workers may also have opportunity based on non-availability of union members or exceptions to union referral provided in some local trade agreements.)

An example of union recognition-referral-dues provisions from the PLA for the Suffolk (NY) County Center Building:

### ARTICLE IV. Union Recognition and Employment

#### SECTION 1. PRE-HIRE RECOGNITION

The Council and the Signatory Unions shall be recognized by all Contractors on the Project as the sole and exclusive bargaining representatives of all craft employees with respect to Covered Work for the Project.

#### SECTION 2. UNION REFERRAL

- (i) All Contractors shall hire and utilize for the duration of the Project, craft employees who are referred through the job referral systems, hiring halls or related job placement practices established by the applicable Appendix A Agreement. Notwithstanding this requirement, every Contractor shall have the sole right to determine (a) the number of employees required; (b) the competency of all referred employees; (c) which employees are to be laid-off, subject to the requirements of this Agreement and (d) whether to reject any referred employees, subject to the applicable Appendix A Agreement.
- (ii) If a Signatory Union is unable to fill any request for qualified employees within two (2) working days after the request is made by the Contractor, the Contractor may employ qualified applicants from any other available source. If a Signatory Union does not have a job referral system, the Contractor shall give the Signatory Union preference to refer applicants, subject to the non discrimination and other provisions of this Article. The Contractor shall notify the appropriate Signatory Union of craft employees hired within its jurisdiction from any source other than referral by that Signatory Union.
- (iii) The Signatory Unions shall exert their utmost efforts to recruit sufficient numbers of skilled craft workers to fulfill the manpower requirements of each Contractor. The signatories to this Agreement support the development of increased numbers of skilled construction workers to meet the need of the Project and of the industry generally. Toward that end, the Signatory Unions agree that any recognized job referral system shall give priority to qualified residents from Suffolk and Nassau Counties and their immediate vicinity, to the extent consistent with applicable law. The Signatory Unions shall not knowingly refer to a Contractor an employee then employed by another Contractor under this Agreement.

#### SECTION 3. NON-DISCRIMINATION

#### SECTION 4. MINORITY AND FEMALE REFERRALS

[See this Chapter – Section E]

## SECTION 5. UNION DUES

All employees covered by this Agreement shall be subject to the union security provisions contained in the applicable Appendix A Agreement, as amended from time to time, but only for the period of time during which they are performing Covered Work and only to the extent of rendering payment of the applicable monthly union dues uniformly required for union membership in the Signatory Union which represents the craft in which the employee is performing Covered Work. No employee shall be discriminated against at the Project because of the employee's union membership or lack thereof. In the case of unaffiliated employees, the dues payment will be received by the Signatory Union as an agency shop fee.

A PLA covering construction of a high school in western New York State contains a fairly detailed referral clause. This example illustrates several important points, including core personnel provisions.

Section 3. (a) Subject to the provisions of this Agreement, the Contractor agrees to hire employees for covered work through the job referral systems provided for below. This job referral system will be operated in a non-discriminatory manner and in full compliance with Federal, State, and Local laws and regulations which require equal employment opportunities and nondiscrimination, and referrals shall not be affected in any way by the rules, regulations, by-laws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements and shall be subject to such other conditions as established in this Article. There shall be no non-productive personnel or featherbedding. Foremen and stewards are to perform work as directed by the contractors. Crew size shall be at the discretion of the contractors. Contractors may use their own employees in key management positions such as Superintendents or Assistant Superintendents. In addition, the Contractor may hire, per craft, five (5) journeypersons referred by the affected trade or craft and may then hire one (1) core employee as a journeyperson who has been regularly employed by that Contractor for a reasonable period of time. That process shall be repeated, five (5) and one (1), until the crew requirements for that craft have been met or until the Contractor has hired three (3) employees not referred by the affected union, whichever occurs first. Alternatively, a contractor may request by name and employ members of the Trades for these positions. Selection/referral of other employees shall be in accordance with existing collective bargaining agreements for each trade.

A Nevada PLA illustrates typical language in right-to-work states:

Section 8: No employee covered by this agreement shall be required to join any Union or pay any agency fee or dues as a condition of being employed, or remaining employed, on the Project. Where, however, there is in effect and in the possession of the General Contractor and/or contractor a voluntary written dues deduction authorization executed by the employee in a standard form furnished by the Union, the General Contract and/or Contract agrees to deduct union dues from the pay of the employee and to remit the dues to the Union at the same time that trust fund contributions are required to be remitted to the administrators of the appropriate trust funds on behalf of that employee.

## **C. Safety**

PLAs will generally provide for the construction manager to establish a set of site-safety rules in consultation with either a general labor-management committee or a safety

specific labor-management committee. Provisions related to drug and alcohol testing may be specifically included in a PLA. The PLA may include a provision to adopt safety practices necessary as part of an Owner Controlled Insurance Program ('OCIP') [sometimes referred to as 'wrap-up' insurance]. Provisions for emergency work across trade lines in the event of accident, fire or 'act of God' often appear in PLAs—although not necessarily in the same section of the agreement. In short, safety language in PLAs can range from very perfunctory to very detailed. Often, if a PLA has perfunctory language it is because there is a highly detailed safety (and perhaps drug testing) program comprising a separate document (or documents).

An example of safety language from the Rockland County (NY) Courthouse PLA:

ARTICLE XIV – SAFETY PROTECTION OF PERSON AND PROPERTY

SECTION 1. SAFETY REQUIREMENTS

Each Contractor will ensure that applicable OSHA requirements are at all times maintained on the Project and the employees and Unions agree to cooperate fully in these efforts. Employees must perform their work at all times in a safe manner and protect themselves and the property of the Contractor and Authority from injury or harm. Failure to do so will be grounds for discipline, including discharge.

SECTION 2. CONTRACTOR RULES

Employees covered by this Agreement shall at all times be bound by the safety, security and visitor rules as established by the Contractors and the Construction Manager for this Project. Such rules will be published and posted in conspicuous places throughout the Project.

SECTION 3. INSPECTIONS

The Contractors and Construction Manager retain the right to inspect incoming shipments of equipment, apparatus, machinery and construction materials of every kind.

On the hand, more detailed language is found in a Washington state PLA, only part of which is reproduced here:

16.1 The parties to the agreement will participate in the Voluntary Protection Program...In the VPP, management, labor, and government establish a cooperative relationship at the workplace to address worker safety and health issues and expand worker protection...

16.2 The parties to this agreement will form a joint Labor/Management Safety Committee consisting of equal numbers of contractor and Union representatives, to be agreed upon by the parties, which shall be jointly chaired by the site representative of [the construction manager] and an official of the [] Building and Construction Trades Council...

16.3 The [construction management] team will develop a Project Safety Committee of contractors' employee representatives to address issues pertinent to activities onsite, plan and discuss future project work and review the current health and safety plan and procedures...

16.4 Formal safety and health training is required of all contractors for their employees...

16.5 It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the Owner, [construction manager], or the Contractor.

16.6 Employees shall be bound by the safety, security, and visitor rules and environmental compliance requirements established by the Contractor, [the construction manager], or the Owner...

16.7 The use, sale, transfer, purchase and/or possession of a controlled substance, and /or alcohol while on the Owner's premises at any time during the workday is prohibited. Contractors will implement a drug policy meeting [the construction management firm's] minimum standards for Drug-Free Workplace Program separately attached under Appendix D. [The construction manager] may conduct reasonable searches, as permitted under the law, including random searches, of all workers on site and may require and receive the results of a 7-panel drug screen test of any worker on site. Any worker found to possess or be under the influence of an article prohibited by the Standards, or refusing to be tested or consent to a reasonable search may, in [the construction manager's] sole discretion, be immediately removed from the project site and denied future access...

16.8 These procedures outline the safeguards set forth for the testing of employees for prohibited and controlled substance, adulterants and alcohol. It is agreed, with respect to such test procedures, that: (i) no person referred from the Union hiring hall shall be allowed on-site as an employee until such person has completed and passed any test(s) required under the program; (ii) a person who is put to work immediately after having passed the tests shall be paid starting at the time he reported for the test(s); and (iii) where a contractor requests a person to report for purposes of pre-employment substance abuse and alcohol test, and does not intend to place him in an active work position on that day, the person shall receive four (4) hours or pay at the regular straight-time hourly rate if the test is negative.

16.9 The authorized [(sic?)] use or possession of firearms, weapons, explosives, or incendiary material on or near the Project premises...is prohibited...

16.10 The parties acknowledge that the environmental and safety restrictions governing conduct at the Project site prohibit smoking at any time in any facility...

16.15 Violators of the [program] will be subject to termination for cause with the same conditions for rehire as established in Article IX [referral provisions].

## **D. Labor-Management Committee**

Virtually all PLAs provide for a labor-management committee—generally chaired by the project's construction manager. In part, this committee is a vehicle to solve problems 'on-site' and to avoid the time and expense of formal dispute resolution (see Chapter IV). However, the labor-management committee can be used to address a wide range of employment, safety, and work process issues.

An example from the PLA for the Mount Vernon (NY) School District:

### **ARTICLE 8 – LABOR MANAGEMENT COMMITTEE SECTION 1. SUBJECTS**

The Project Labor Management Committee will meet on a regular basis to: 1) promote harmonious relations among the Contractors and Unions; 2) enhance safety awareness, cost effectiveness and productivity of construction operations; 3) protect the public interest; 4) discuss matters related to manning and scheduling with safety and

productivity as considerations; and 5) review Affirmative Action and equal opportunity matters pertaining to the Project.

#### SECTION 2. COMPOSITION

The Committee shall be jointly chaired by the designee of the President of the Council and the Construction Manager, and shall include representatives of the Local Unions and Contractors involved in the issues being discussed. The Committee may conduct business through mutually agreed sub-committees.

### **E. Other Common Provisions**

Many PLAs are written to include provisions for equal opportunity (based on past history and continued perceptions of discrimination in the building trades), timekeeping, forepersons, and tools of the trade.

#### **1. Equal Opportunity and Non-Discrimination**

From PLA for the Suffolk County (NY) Civil Court Complex:

##### SECTION 3. NON-DISCRIMINATION

The Signatory Unions represent that their hiring halls, referral systems and related job-placement practices will be operated in a non-discriminatory manner and in full compliance with applicable federal, state and local laws and regulations which require equal employment opportunities. Referrals shall be subject to such conditions as are established in this Article. No employment applicant shall be discriminated against by any referral system, hiring hall or related job-placement practice, because of the applicant's union membership, or lack thereof.

##### SECTION 4. MINORITY AND FEMALE REFERRALS

If a Signatory Union either fails, or is unable, to refer qualified minority or female applicants in percentages equaling Project-affirmative actions goals set in the Contract Documents, the Contractor may employ qualified minority or female applicants from any other available source.

Perhaps the most highly-developed system for minority employment was found a PLA for the Port of Oakland and was reported by Johnston-Dodds (2001) in research for the California legislature. The PLA included a strong organizational links between the project and community-based organizations to provide employment opportunities for disadvantaged Oakland residents (Johnston-Dodds 2001). First, the PLA included a program that allowed local contractors to bid on small (not to exceed \$300,000) jobs without signing the PLA. Second, the PLA set hiring goals for workers living in certain areas, mainly those with high levels of poverty. Fifty percent of all hours worked on the project, on a craft-by-craft basis, was to be performed by workers from the designated areas. The PLA also stated that twenty percent of total hours be performed by apprentices (unless local agreements allow for even greater participation) and that all apprentices be drawn from the designated areas. To monitor progress, a Social Justice Committee was established by the PLA. It reviewed monthly progress reports, and made recommendations for improvements or changes. A trust fund, financed through a per capita assessment, was also established to help finance the social justice initiatives.

Other PLAs also set goals for minority participation, often through apprenticeship programs. A good example is provided in a New Jersey PLA:

**SECTION 1. RATIOS**

Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry and to provide craft entry opportunities for minorities, women and economically disadvantaged non-minority males, the Contractor and Subcontractors will employ apprentices in their respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. The Contractor and Subcontractors may utilize apprentices and such other appropriate classifications as are contained in the applicable Collective Bargaining Agreement in Schedule A [(i.e. the local agreements)] in a ratio not to exceed 25% of the work force by craft without regard to whether a lesser ratio is set forth in Schedule A, unless the applicable Collective Bargaining Agreement in Schedule A provides for a higher percentage. Apprentices and such other classifications as are appropriate shall be employed in a manner consistent with the provisions of the appropriate Collective Bargaining Agreement in Schedule A.

**SECTION 2. DEPARTMENT OF LABOR**

To assist the Contractor and Subcontractors in attaining the maximum effort on this Project, the Unions agree to work in close cooperation with, and accept monitoring by the New Jersey State Department of Labor and the United States Department of Labor to ensure that minorities and women are afforded every opportunity to participate in apprenticeship programs which result in the placement of apprentices on this Project. To further ensure that this Contractor and Subcontractor effort is attained, up to 50% of the apprentices placed on this Project shall be first year, minority, women or economically disadvantaged apprentices as shall be 60% of the apprentice equivalents, placed on the Project who do not necessarily meet all of the age or entrance requirements for the apprentice program or have necessarily passed the entrance examination. The Local Unions will cooperate with Contractor and Subcontractor requests for minority, women or economically disadvantaged referrals to meet this Contractor effort.

## **2. Timekeeping**

An example from the PLA for the Pelham (NY) School District:

**SECTION 9. TIME KEEPING**

A Contractor may utilize brassing or other systems to check employees in and out. Each employee must check in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

## **3. Forepersons**

The language as to forepersons may be purely administrative or may include provisions that have productivity/cost-saving implications. Sometimes the assignment of forepersons is one of many rights enumerated in a management's rights clause; other times PLAs are completely silent, leaving the matter to governance by local collective bargaining agreements.

Examples are provided here. Notice that the Suffolk County agreement allows only for “working” forepersons.

From PLA for Suffolk County (NY) Civil Court Complex:

**SECTION 6. CRAFT FOREPERSONS AND GENERAL FOREPERSONS**

The selection of craft forepersons and general forepersons, and the number of forepersons required, shall be at the discretion of the Contractors, except where such selection is otherwise provided by specific provisions of an applicable Appendix A Agreement. All forepersons shall take orders exclusively from the designated Contractor representatives. Craft forepersons shall be designated as working forepersons.

From the Tappan Zee PLA:

**SECTION 7. CRAFT FOREPERSONS AND GENERAL FOREPERSONS**

The selection of craft forepersons and/or general forepersons and the number of forepersons required shall be solely the responsibility of the Contractor except where otherwise provided by specific provisions of an applicable Schedule A. All forepersons shall take orders exclusively from the designated Contractor representatives. Craft forepersons shall be designated as working forepersons at the request of the Contractor, except when an existing local Collective Bargaining Agreement prohibits a foreperson from working when the craftpersons he is leading exceed a specified number.

#### **4. Tools of the Trade**

From PLA for the Rockland County (NY) Court Complex:

**SECTION 2. TOOLS OF THE TRADE**

The welding/cutting torch and chain fall are tools of the trade having jurisdiction over the work performed. Employees using these tools shall perform any work of the trade. There shall be no restrictions on the emergency use of any tools or equipment by any qualified employee or on the use of any tools or equipment for the performance of work within the employee jurisdiction.

### **Chapter III – Economic Adjustments**

Project Labor Agreements provide an owner with the ability to get certain adjustments to local trade contracts that have economic savings as to labor costs across many (if not all) trades. The value of each of these adjustments will vary depending on local conditions and the specific needs of the project. The willingness of the building trades to include any/each of these adjustments will vary based on customs in the locality and the desire to have a PLA across all trades. Where a specific building trades council has had a number of past PLAs—the language of those agreements tends to provide a broad parameter for likely future agreements.

The classification/lettering of the adjustment provisions in this chapter largely comes from a paper on NY State Public Project Labor Agreements written by John Spavins. The adjustments lettered A thru W are found in some of those New York agreements. The

adjustments lettered X, Y and Z are relatively rarely found in PLAs across the United States.

### **A. Eight Hour Day**

All trades work 8 hours Monday to Friday at straight time pay. This is rightly classified as an “economic adjustment”, since, in some jurisdictions some trades less than eight hour days. Usually, however, an eight hour day, regardless of local agreements, is standard under PLAs.

### **B. Common Lunch**

Provides for a ½ hour lunch break and a ½ meal break on other shifts—where shift work is anticipated.

### **C. CM Start Time Option**

Construction Manager can set a common start time for all trades. Second shift start time will change with any shift in day shift time.

These three are found in most PLAs since they increase productivity and speed of construction by coordinating hours across all trades at regular (straight time) hourly rates. An example of PLA language for these three adjustments is found in the PLA for the Mount Vernon (NY) School District:

#### **SECTION 1. WORK WEEK AND WORK DAY**

Eight (8) hours shall constitute a normal work day's work between the hours of 8:00 am and 4:30 pm (with a half hour unpaid lunch break), five days a week, Monday through Friday. The Construction Manager can elect to work the first shift beginning at 7:00 am through 3:30 pm

However, one advantage of a PLA is that it can deal with flexible scheduling across trades. An airport project in Rhode Island, for example, required unusual scheduling, since the airport remained open while major renovations were occurring. For safety reasons and to avoid inconvenience to the traveling public, much thought went into the scheduling provisions in the PLA. The agreement also allowed the contractor to schedule “all or part” of the workforce to work second or third shifts. Second shift workers would work seven hours for eight hours of pay, and third shift workers 6 ½ hours for eight hours pay. The agreement also stated that “the parties...recognize that construction work covered by the terms of this Agreement shall be performed in a manner that will cause the least disruption of the continuing operation of the airport, and therefore to achieve that goal a second (2<sup>nd</sup>) and/or third (3<sup>rd</sup>) shift may be established without the scheduling of any previous shifts...” However, the centerpiece of the scheduling provisions was a Flex Time clause, which the parties agreed to with the understanding that the airport needed to maintain “efficient operations...while complying with...noise mitigation requirements, all federal and state requirements, and...[attending to] the needs of the traveling public.” The Flex Time arrangements allowed for several possibilities: a

staggered work week of seven days on and two days off; four ten hour days; and eight hour days with adjusted start and quit times. The PLA also allowed for “any other mutually agreed upon alternative work schedule.”

#### **D. Shop Steward Limitations**

This provision placed limitations on the authority of shop stewards in comparison to local agreements.

From PLA for the Rockland County (NY) Court Complex:

##### **SECTION 2. STEWARDS**

Each Local Union shall have the right to designate a working journeyman as a steward, and an alternate, and shall notify the Contractor and Construction Manager of the identity of the designated Steward (and an alternate) prior to the assumption of such duties. Stewards shall not exercise supervisory functions, and will receive the regular rate of pay for their craft classifications. There will be no non-working Stewards on the Project.

In addition to work as an employee, the Steward shall have the right to receive complaints or grievances, and to discuss and assist in their adjustment with the Contractor's appropriate supervisor. Each Steward shall be concerned with the employees of the Steward's Contractor and, if applicable, subcontractors of that Contractor, but not employees of any other Contractor. The Contractor will not discriminate against the Steward in the proper performance of Union duties.

The Stewards shall not have the right to determine when overtime shall be worked, or who shall work overtime except pursuant to a Schedule A provision providing procedures for the equitable distribution of overtime.

A Nevada PLA states that stewards will “receive the regular rate of pay for their respective crafts” and “shall have the right to receive, but not solicit, complaints or grievances.

Most PLAs require that a contract give 24 hours notice before laying off a steward.

#### **E. Management Rights**

This is a broad area of topics that vary greatly between agreements. In some cases terms found in one agreement under this heading will be found in another agreement under a different heading.

There are really two things that distinguish the managements' rights clauses in PLAs from those in standard construction sector collective bargaining agreements. First, most PLAs have strict language prohibiting any restrictions on output, on technological change, or on the “means and methods” used for construction. Sometimes management rights clauses given contractors the unilateral right to determine crew sizes, even if local agreements have minimum standards. The second noteworthy aspect of PLA management rights clauses is that a “just cause” provision is nearly universal. Although less true today, local construction agreements are much less likely than contracts in other industries to include just cause language. Rather, employers typically retained the right to

terminate who they wanted when they wanted. One reason for this broad power was that the union could usually send the terminated employee to another employer through the hiring hall. PLA, however, nearly always have a just cause provision and allow employees to adjudicate a disciplinary action through the grievance procedure.

The Tappan Zee PLA contained the following:

ARTICLE 6 – MANAGEMENT’S RIGHTS

SECTION 1. RESERVATION OF RIGHTS

Except as expressly limited by a specific provision of this Agreement, Contractors retain full and exclusive authority for the management of their Project operations including, but not limited to: the right to direct the work force, including determination as to the number to be hired and qualifications therefore; the promotion transfer, layoff of its employees; or the discipline or discharge for just cause of its employees; the assignment and schedule of work; the promulgation of reasonable Project work rules; and, the requirement, timing and number of employees to be utilized for overtime work. No rules, customs, or practices which limit or restrict productivity or efficiency of the individual, as determined by the Contractor or Construction Project Manager, and/or joint working efforts with other employees shall be permitted or observed.

SECTION 2. MATERIALS, METHODS & EQUIPMENT

There shall be no limitation or restriction upon the Contractors’ choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finish, or pre-assembled materials, tools, or other labor-saving devices. Contractors may, without restriction, install or use materials, supplies or equipment regardless of source. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in the installation, check-off or testing of specialized or unusual equipment or facilities as designated by the Contractor. There shall be no restrictions as to work which is performed off-site for the Project.

A Michigan PLA provides another example:

Section 1: The Contractor retains full and exclusive authority for the management of its operation. Except as expressly limited by the other provisions of the Agreement, the Contractor retains the right to direct the work force, including the hiring, promotion, transfer, layoff, discipline or discharge for just cause of its employees; the selection of foremen; the schedule of work; the promulgation of reasonable work rules; and, the scheduling of overtime work, the determination of when it shall be worked, and the number and identity of employees engaged for such work. No rules, customs or practices which limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed. The Contractor may utilize any methods or techniques of construction so long as they are reasonable and safe with in the particular circumstances.

Section 2: Except as otherwise expressly stated in this Agreement, there shall be no limitation or restriction upon the Contractor’s choice of materials or design, nor, regardless of source or location upon the full use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools or other labor-saving devices. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work.

Section 3: Except as otherwise expressly stated in the Agreement, it is recognized that the use of new technology, equipment, machinery, tools and/or labor saving devices and methods of performing work may be initiated by the Contractor from time to time during the Project. The Union agrees that it will not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between the Contractor and the Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor, and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article VII of this Agreement.

## **F. Second Shift without Day Shift**

This provision is particularly useful for renovation work in facilities in use at daytime hours—such as schools.

An example from the PLA for the Mt. Vernon (NY) School District:

“The parties agree that it may be necessary to perform rehabilitation work during periods when school is in session. In that case, the Local Unions agree that the first shift may begin at 4:00 pm and end at 12:30 pm (With a ½ hours unpaid lunch period) each day, Monday through Friday. ...”

A Massachusetts high school project provided even more detail to shift work

(a) Any contractor may schedule all or part of the workforce to work a second (2<sup>nd</sup>) and/or third (3<sup>rd</sup>) shift. The Contractor shall give the Union five (5) days notice prior to the start of any shift operation and any shift operation established shall continue to for at least five (5) consecutive work days. Employees assigned to a second (2<sup>nd</sup>) shift shall work a total of eight (8) hours and be compensated for eight (8) hours pay at the base hourly wage plus a shift differential of ten percent (10%). Employees assigned to the third (3<sup>rd</sup>) shift shall work a total of eight (8) hours and be compensated for eight (8) hours pay at the base hourly rate plus a shift differential of fifteen percent (15%). There shall be a one-half (1/2) hour unpaid lunch period during the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) shifts. Time worked beyond the end of any shift shall be compensated for at the applicable overtime rate. The overtime rate for the second and third shifts shall be based upon the rate in Section 2 plus the applicable shift differential outlined above. There shall be no restriction upon the Contractor’s establishment of shift schedules which are consistent with the language above.

(b)(i) Any shift that is to commence its operations within three (3) hours of the conclusion of the Project’s established Standard Work Day shall be recognized as a second (2<sup>nd</sup>) shift, and all employees scheduled to work on that shift shall be compensated as outlined above.

(ii) Any shift that commences its operations more than three (3) hours from the conclusion of the Project’s established Standard Work Day shall be recognized as a third (3<sup>rd</sup>) shift and employees scheduled to work on that shift shall be compensated as outlined above.

## **G. Cap on Premium for Second Shift**

All trades work at a rate lower than overtime for the second shift. Provision should be written in a way that does not ‘give a bonus’ to trades where work would otherwise be done at straight time—or a lower premium.

An example from the PLA for the Rockland County (NY) Court Complex:

“Second Shift—the second shift (starting between 2 pm and 8 pm) shall consist of 8 hours work for an equal numbers of hours pay at the straight time rate plus 15% in lieu of overtime, and exclusive of a ½ hour unpaid lunch period.”

## **H. Common Holidays**

Provides the same holidays for all trades on the project. This provision provides for increased productivity and speed of construction by coordinating work schedules—as does the first three adjustments discussed earlier in this Chapter.

An example of common holidays is found in the Tappan Zee PLA:

### SECTION 4. HOLIDAYS

A. Schedule- There shall be 8 recognized holidays on the Project:

New Years Day	Labor Day
Presidents Day	Veterans Day
Memorial Day	Thanksgiving Day
Fourth of July	Christmas Day

All said holidays shall be observed on the dates designated by New York State Law. In the absence of such designation, they shall be observed on the calendar date except those holidays which occur on Sunday shall be observed on the following Monday.

B. Payment—Regular holiday pay, if any, and/or premium pay for work performed on such a recognized holiday shall be in accordance with the applicable Schedule A.

C. Exclusivity- No holidays other than those listed in Section 4-A above shall be recognized nor observed.

The following language from a Minnesota PLA provides a good example of a number of scheduling issues.

### Article VIII

#### Hours of Work, Overtime, Shifts and Holidays.

8.1 The regular forty (40) hour work week will start on Monday and conclude on Friday. Eight (8) consecutive hours, exclusive of a one-half (1/2) hour lunch period, between 7:00 a.m. and 5:00 p.m. shall normally constitute a work day. The starting time of the Work may be changed within these hours by the Employer upon notification to the Union to take advantage of daylight hours, weather conditions, shift, or traffic conditions. It is understood that all work performed in excess of eight (8) hours per day shall be considered overtime. Starting time may be adjusted up to one (1) hour prior to 7:00 a.m. with mutual consent of the Union and Employer.

8.2 At the scheduled starting time, all employees will be at the place where they pick up their tools or receive instructions from their foreman. They shall remain at their place of work under the supervision of the Employer until the scheduled quitting time. There shall be no practices that result in starting work late in the morning or after lunch or in stopping work early at lunch time or prior to the scheduled quitting time. Coffee breaks will be limited to ten (10) minutes and shall be taken in close proximity to the Employee's Work Station. The parties are in accord that the intent of the Agreement is a

“fair day’s work for a fair day’s pay” and Work should be managed in such a manner to enable the Employer to maintain and increase efficiency consistent with fair labor standards.

8.3 When employees leave the Work on their own accord at other than normal quitting time, it is their responsibility to notify the Employer. Employees will be paid only for actual hours worked.

8.4 The Employer shall determine the recording devices, checking systems, brassing or other methods of keeping time records on the Work.

8.5 An effort will be made to keep overtime work to a minimum but when such is judged necessary it will be worked at the direction and discretion of the Employer.

8.6 All overtime to be paid at time and one-half except on Sunday and Holidays which will be paid as specified in Local Union Bargaining Agreements

8.7 All employees shall be paid for actual time worked. The Employer shall have sole responsibility to determine availability of work due to weather conditions.

8.8 Shift work may be performed at the option of the Employer. In the event the second or third shift of any regular work day shall extend into a holiday, employees shall be paid at regular shift rates. Shift work shall be paid as specified in local collective bargaining agreements. When so elected by the Employer, multiple shifts of a temporary basis, shall be worked the number of consecutive days required by the Local Union Bargaining Agreement.

8.9 Uniform holidays for the Agreement are as follows: New Year’s Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, the Friday after Thanksgiving, Christmas Eve Day and Christmas Day. If any of these holidays fall on a Saturday or Sunday, the preceding day, Friday, or the following day, Monday, shall be considered to be a legal holiday. A holiday shall be a 24-hour period commencing with the established starting time of the day shift on the date of the holiday.

8.10 When work is to be performed in controlled areas, the Employer may elect to have the employees take two (2) one-half hour breaks instead of two (2) ten minute coffee breaks and a one-half hour lunch period.

**I. Cap on Over-Time for Monday-Friday at 1.5 Regular Hourly Rates.**

An example from the PLA for the Mount Vernon (NY) School District:

“Overtime at the rate of time and one-half the straight time wage for all employees covered by this Agreement shall be paid for the following:

- (a) work outside of the standard starting and finishing time
- (b) work in excess of eight (8) hours per day
- (c) work on Saturday

**J. Cap on Over-Time for Saturday at 1.5 Regular Hourly Rates.**

(See previous over-time language from the PLA for the Mount Vernon School District.)

**K. 4 Days by 10 hours (4 x 10) at Regular Hourly Rate.**

This provision is particularly useful in roadway reconstruction projects and certain renovation work at facilities in use.

An example from the PLA for the Pelham (NY) School District:

“Four Day Work Week: Monday-Thursday, 4days 10 hours plus ½ hour unpaid lunch each day.”

A New Jersey PLA states:

(2) Four Day Work Week: Monday-Thursday; four (4) days per week, ten (10) hours per day plus one-half hour unpaid lunch period each day. The establishment of a four day work week will require the prior consent of the Union(s) which represent the affected employees, such consent not to be unreasonably withheld.

### **L. Limitation on Benefit Payments**

This provision generally limits the kinds of payments the contractors are required to pay to union or labor/management trust funds. Typical exclusions are training and industry promotion funds. The language of this provision may be tied into the applicable prevailing wage law when the PLA is on a public project.

The following language in the ‘Tappan Zee PLA’ is found in many public PLAs in New York:

#### **SECTION 2. EMPLOYEE BENEFIT FUNDS**

- A. The Contractors agree to pay contributions on behalf of all employees covered by this Agreement to the established employee benefit funds in the amounts designated in the appropriate Schedule A; provided, however, that the Contractor and the Union agree that only such bona fide employee benefits as explicitly required under Section 220 of the New York State Labor Law shall be included in this requirement and paid by the Contractor on this Project. Bona fide jointly trustee fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added if similarly protected under Section 220. Contractors shall not be required to contribute to non-Section 220 benefits, trusts or plans.
- B. The Contractor agrees to be bound by the written terms of the legally-established Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only for those employees to whom this Agreement requires such benefit Payments.

Similarly, an Oregon PLA states:

The Employer shall pay only fringe benefit funds for employees (such as pension, health and welfare, vacation, apprenticeship and the like) that have been legally negotiated and established by the applicable collective bargaining agreement. Each Union will provide the Employer with an accurate Schedule A, denoting by name those funds stipulated to be paid. [This] [e]xpressly excludes any and all Industry Promotion Funds, Contract Administration Funds, Contractor-Union Management Funds, Craft or Industry Alliance, or Associations.

### **M. Manning Limitation for Temporary Heat**

This provision is utilized to avoid multiple trades manning equipment where one worker would be sufficient. This provision is generally found where plumbing and mechanical trades have strong provisions in the local agreements. (This clause can be folded into a broader management rights clause related to assignment of work.)

An example from the Suffolk County Civil Court Complex PLA:

### SECTION 3. TEMPORARY UTILITIES

In the event that a temporary heating system is in use on the site and is claimed by multiple trades, rotation of Individual trades for standby coverage will be negotiated to minimize standby costs. Such negotiations will be among the designated representatives of the Labor Management Committee and the relevant trades representatives.

Dedicated temporary utility coverage shall not be required during normal working hours. Standby coverage during non-working hours shall be negotiated based upon operating conditions and requirements.

An Indiana PLA states:

Section 1: There shall be no limit on production by workers nor restrictions on the full use of tools and equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service.

...

Section 7: The Union will not impose conditions which limit or restrict production or limit or restrict the joint or individual working efforts of employees. The Construction Contractor may utilize any method or technique of construction, and there shall be no limitation or restriction regardless of source or location of machinery, precast tools, or other labor-saving devices, nor shall there be any limitation upon choice of materials and design.

### **N. Community Employment Preference**

This provision provides some form of preference for workers based on residency-consistent with other regulations- as to union referrals or recruitment from other sources. While not an economic adjustment in the normal sense of the term, this kind of provision often builds support for a project that faces local opposition of a political/legal nature – which has economic consequences for the owner and labor. This is a kind of provision appears with wide variations in many public PLAs—but can be useful to private owners as well.

The following language from the PLA for the Suffolk County Center Building is found in many agreements negotiated by the Nassau/Suffolk Building Trades Council [east of New York City]:

### SECTION 2. UNION REFERRAL

“... Toward that end, the Signatory Unions agree that any recognized job referral system shall give priority to qualified residents from Suffolk and Nassau Counties... to the extent consistent with applicable law....”

A Connecticut PLA stated that “the Unions will exert their best efforts to refer to the Project, first, residents of Ansonia, next, resident of Derby, Oxford, Seymour, and Shelton, and, next residents of the State of Connecticut.”

### **O. Apprenticeship Opportunity**

Like the adjustment just mentioned (‘N’), this provision often helps to build community support for a project. Residents in the project area have some additional/special opportunity to enter apprenticeship programs in various trades.

An example from the Mt. Vernon (NY) School District PLA:

#### **SECTION 3. PRE-APPRENTICE TRAINING**

There currently is in place a Westchester-Putnam Counties Consortium for Worker Education and Training Pre-Apprentice Program (“Consortium”). It is the goal for this Project the 50% of the apprentices that work on the Project will be assigned from this consortium. The Consortium will accept ‘walk-up’ applicants who are Mount Vernon residents and meet its qualification standards, and such applicants, to extent there are any, shall be preferred for referral by the Consortium for Project work.

The Pre-Apprenticeship Program runs continuously for a period not to exceed five (5) weeks. Subject to New York State DOL Approval, the pre-apprentice shall be paid \$8.00 per hour for the first five weeks of employment. If the pre-apprentice is continued in employment beyond the 5<sup>th</sup> week, he/she shall receive the appropriate wages and benefits for a first year apprentice in that trade or, if there is no apprentice rate/program for that trade, will receive a rate which is 50% of the wage rate of a Journeyman in that trade. Upon completion of the Pre-Apprenticeship Program, and compliance with all qualifications of the relevant Local Union apprentice program, the pre-apprentice will be accepted into the Local Union’s apprenticeship program. Each Local Union agrees to accept at least one Mount Vernon resident apprentice who completes this Pre-Apprenticeship Program.

Each Local Union agrees to seek any waiver necessary from the New York State DOL, or any other appropriate governmental entity, through the Consortium, to allow the pre-apprentice to enter into the Local Union apprenticeship program.

As well, they can be used to establish pre-apprenticeship programs as seen in this New York State PLA:

#### Article XIV

##### PRE-APPRENTICE PROGRAM

The Owner has established a Pre-Apprenticeship Program for this Project, the purpose of which is to enlighten and address various opportunities that the construction industry offers to the students of the City of Buffalo’s Vocational High Schools. The Pre-Apprenticeship Program is contained in the Bid Specifications for the Project.

It is agreed that nothing in this Agreement, or in any Schedule A to this Agreement, shall hinder the implementation and/or operation of the Pre-Apprenticeship Program in any way.

It is agreed and understood that students in the Pre-Apprenticeship Program shall perform “hands-on” work in the following trades: carpentry/drywall, taping, interior finishes/painting, electrical, plumbing, communication and low voltage cabling, masonry, HVAC, finish carpentry work and fire protection. Nothing in this Agreement, or in any schedule A to this Agreement, shall limit or prohibit students from performing such hands-on work as part of the Pre-Apprenticeship Program.

The Unions agree to make every effort to assist student to prepare for entry into a State sponsored apprenticeship program.

It is agreed and understood that students participating in the Pre-Apprenticeship Program shall not be considered employees under the terms and conditions for the Agreement or New York State Law.

## **P. Core Provision**

This provision provides a contractor that is not otherwise a union signatory to bring in a limited number of ‘key trade employees’ outside the union referral system as agency fee payers. A core provision is also referred to in building trade circles as the ‘drag’ on the PLA since the primary reason the building trades enter a PLA is to guarantee work to its members. The number of such ‘key workers’ is generally defined as a percentage of the contractor’s project workforce—either total or by trade. This provision also defines one or more ‘tests’ for the employee to be defined as a ‘key person’. The existence of a core provision is often critical to determining the economic viability of a PLA in terms of contractor competition as well as the legal tests that often must be examined in public project labor agreements in various states. (See Introduction, Chapter II B and Appendix A for related information.)

The provision for core employees found in the Tappan Zee PLA is often used in New York:

B. A Contractor may request by name, and the Local will honor, referral of persons who have applied to the Local for Project work and who meet the following qualifications as determined by a Committee of 3 designated, respectively, by the applicable Local Union, the Construction Project Manager and a mutually selected third party or, in the absence of agreement, the permanent arbitrator (or designee) designated in Article 7:

- (1) possess any license required by NYS Law for the Project work to be performed;
- (2) have worked a total of at least 1000 hours in the Construction craft during the prior 3 years;
- (3) were on the Contractor’s active payroll for at least 60 out of 180 calendar days prior to contract award;
- (4) have demonstrated ability to safely perform basic functions of the applicable trade.

No more than 12 per centum of the employees covered by this agreement, per Contractor by craft, shall be hired through the special provisions above (any fraction shall be rounded to the next highest whole number).

This example from western New York state also provides a good illustration of key worker provisions.

Section 3. (a) Subject to the provisions of this Agreement, the Contractor agrees to hire employees for covered work through the job referral systems provided for below. This job referral system will be operated in a non-discriminatory manner and in full compliance with Federal, State, and Local laws and regulations which require equal employment opportunities and nondiscrimination, and referrals shall not be affected in any way by the rules, regulations, by-laws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements and shall be subject to such other conditions as established in this Article. There shall be no non-productive personnel or featherbedding. Foremen and stewards are to perform work as directed by the contractors. Crew size shall be at the discretion of the contractors. Contractors may use their own employees in key management positions such as Superintendents or Assistant Superintendents. In addition, the Contractor may hire, per craft, five (5) journeypersons referred by the affected trade or craft and may then hire one (1) core employee as a journeyperson who has been regularly employed by that Contractor for a reasonable period of time. That process shall be repeated, five (5) and one (1), until the crew requirements for that craft have been met or until the Contractor has hired three (3) employees not referred by the affected union, whichever occurs first. Alternatively, a contractor may request by name and employ members of the Trades for these positions. Selection/referral of other employees shall be in accordance with existing collective bargaining agreements for each trade.

#### **Q. Premium Cap- Second Shift- Renovation Work Only**

An example from a PLA for school construction for Pelham School District [just north of New York City]:

“The parties agree that it may be necessary to perform rehabilitation work during periods when school is in session... Premium pay for this work shall be ten percent (10%).”

#### **R. Apprentice Ratio**

This provision provides for a greater use of apprentices than would otherwise permitted. Since apprentices are paid significantly lower rates than journeypersons—this is an economic advantage to the contractors.

An example from the Tappan Zee PLA:

“...Contractors may utilize apprentices and such other appropriate classifications as are contained in the applicable Schedule A in a ration not to exceed 25% of the work force by craft (without regard to whether a lesser ration is set forth in Schedule A), unless the applicable Schedules A provide for a higher percentage. Apprentices and such other classifications as are appropriate shall be employed in a manner consistent with the provisions of the appropriate Schedule A.”

Sometimes PLAs adjust the journeyman/apprentice ratio, such as in this following Indiana PLA:

The combined employment of apprentices and non-journeymen classifications in a craft may be: (a) up to forty percent (40%) of a craft's work force where that craft's applicable local collective bargaining agreement recognizes both apprentices and other non-journeymen classifications, or (b) for a craft whose local collective bargaining agreement recognizes only an apprenticeship classification, thirty-three and one-third percent (33 1/3%) unless the applicable local collective bargaining agreement establishes a higher percentage.

### **S. Special Shift Time- Renovation Work Only**

An example from a PLA for school construction for the New Rochelle (NY) School District:

“The parties agree that it may be necessary to perform rehabilitation (renovation) work during periods when school is in session. In such case, the first shift may begin at 4:00 pm and end at 12:30 pm (inclusive of a half-hour meal break) Monday through Friday. Premium pay for this work shall be ten percent (10%). The Contractor shall make reasonable efforts to provide a minimum of five consecutive work days for this shift”.

### **T. No Travel Allowances**

The following language is found in many PLAs:

“There shall be no payments for travel expenses, travel time, subsistence allowance or other such reimbursements or special pay except as expressly set forth in this Agreement.”

### **U. Premium Cap—Third Shift**

An example from the PLA for the Pelham School District:

“Shift premium for the second and/or third shift shall be fifteen percent (15%).”

### **V. 4 x 10 Shifts—Other Than Day Shift**

This provision is found in some road reconstruction PLAs. An example from the Tappan Zee PLA:

“Four Tens- When working a four-day work week, the standard work day shall consist of 10 hours work for 10 hours of pay at the straight time rate exclusive of an unpaid ½ hour meal period and regardless of the start time. This provision is applicable to night shifts only, and such night shifts are subject to the shift differential in paragraph B above.”

### **W. Weather Make-Up Day**

Saturday work at straight time when a day has been lost to weather during the same week- Monday through Friday.

### **X. Pay Freeze**

This provision keeps pay—or pay and benefit rates—at those in place at the time of project start. Examples:

A Connecticut PLA froze wage rates for the duration of the project, it read:

(1) All employees covered by this Agreement shall be classified in accordance with work performed and paid the base hourly wage rates for those classifications as specified in the wage and benefit schedules set forth in the applicable Schedule A. The wage rates will be frozen as of September 1, 1998 for the remainder of the project. Fringe benefits shall not be frozen during this project.

### **Y. Pay Reduction**

This provision reduces regular hourly pay rates by a fixed percentage across all trades. This provision is rare—and is generally associated with PLAs involving residential construction. An example

In another example from Rhode Island, two building projects at a private college contained an across-the-board concession on wages. The agreement stated:

Section 1.: All employees covered by this Agreement shall be classified in accordance with work performed and paid at the rate of eighty (80%) of the base hourly wage rates for those classifications, as specified in the Local Collective Bargaining Agreements which cover those classifications and are attached in Schedule A. Recognizing, however, that special conditions may exist or occur on the Project, the parties, by mutual agreement, may establish rates for one or more classifications which may differ from the formula used to establish Schedule A.

### **Z. Worker Comp—Alternative Dispute Resolution (‘ADR’)**

This provision is sometimes found in PLAs for projects in states that provide for ‘ADR’ for worker compensation disputes. An example

## **Chapter IV – Dispute Resolution**

### **A. Work disruptions in construction.**

Work disruptions in construction arise for a number of reasons. As in all industries, strikes may occur over a bargaining impasse or unfair labor practice. However, several distinctive construction industry characteristics may also lead to disputes.

First, the normal grievance/arbitration process is somewhat less common in construction than in other industries. D. Quinn Mills (1980: 88), writes:

Historically, construction has made little use of binding arbitration by neutrals as a means of settling grievances. Instead of the usually lengthy process of grievance handling and arbitration, there is the ‘instant justice of construction.’ When the job steward and the employer’s superintendent fail to settle grievances, the business agent of the local union intervenes. If he is also unsuccessful, a strike is likely to be called on the spot.

As will be discussed below, Mills’s assertion is much less true today than it was at the time. But it is true that construction unions reserve the right to strike over more issues than is common in other industries. If a contractor fails to meet payroll or its obligations to joint pension or health and welfare funds, that contractor is more likely to face a strike than a grievance. Unions likely fear that an arbitration decision—even a favorable one—would come after a project is completed and the parties have moved on. The frequency with which construction firms fold, change owners, merge, or otherwise reinvent themselves makes them risky debtors.

Second, the strong craft traditions among building trades unions lead to occasional jurisdictional disputes. While it is illegal under the National Labor Relations Act (NLRA) to strike over a jurisdictional dispute, and while the BCTD has a highly-developed program for dealing with such disputes—The Plan for the Settlement of Jurisdictional Disputes in the Construction Industry—work disruptions still occur. Sometime disputes occur outside the jurisdiction of the Plan—for example, when a non-BCTD union or non-stipulating employer is involved.<sup>1</sup> Further, work may be disrupted (or at least a threat of disruption made) to trigger a Section 10(k) determination by the National Labor Relations Board. The Board has the authority to settle jurisdictional disputes under the NLRA, but will only become involved if there is a potential violation of Section 8(b)(4)(D), which prohibits unions from “forcing or requiring” an employer to shift a work assignment. Since, the Board has a reputation for nearly always awarding work to whichever union the employer had originally assigned it, a union facing the loss of work because of the successful pressure of another union or, perhaps, an adverse arbitration decision, will sometimes take or threaten an action to trigger Board involvement. Finally, under Section 8(e) of the NLRA the construction industry is granted a specific exemption from some of the “hot cargo” provisions of the Act. This proviso allows unions to press contractors to restrict on site work to signatory firms. Disputes, including strikes, sometimes occur to protest the presence of nonunion firms on a site.

Further examples could be given, but the point is that there are still quite a few reasons why stoppages *could* occur, which leads to heightened sensitivity by industry stakeholders.

## **B. Concerns about work disruptions**

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<sup>1</sup> In some cases, if both unions were AFL-CIO affiliates, such disputes could be settled through the procedures detailed in Article XX of the AFL-CIO Constitution.

Although work disruptions are not terribly common on worksites today, even minor conflicts can be a problem. Time is often an important consideration on projects; sometimes it may be even more important than cost. It is not uncommon for contracts between owners and contractors to contain incentives for timely completion and penalties for lateness (Nunnally, 2001). Prior to the early 1980s, when unions had a near-monopoly on industrial, commercial, and heavy and highway construction in many parts of the country, purchasers of construction services had little choice but to deal with the frequent interruptions that were simply part of the process.

Today, nonunion firms (also known as non-signatory, open shop, or merit shop firms) control a large share of the market and compete for all types of work in all regions of the country. Some of the largest construction companies in the country, such as Halliburton's Kellogg, Brown & Root (KBR), BE&K, Balfour and Beatty, and Cianbro, are nonunion. Many other firms are "double-breasted," having both union and nonunion subsidiaries. In addition, the nonunion sector has become better organized and more politically active through its main organization, Associated Builders and Contractors (ABC) (Linder, 1999).

One problem that nonunion firms sometimes face—and that affects timeliness—is not being able to maintain a skilled labor force large enough to complete a major project. The "skill shortage" has been much written about in the industry press during the past decade. Unions and union firms promote their apprenticeship and hiring hall systems as a competitive advantage while assuring construction users that they will have enough properly trained workers to complete large projects on time (Waites and Archer, 2001). However, nonunion firms rarely face disruptions caused by labor disputes; a fact used to competitive advantage. This author attended a legislative hearing on PLAs during which an ABC representative portrayed PLAs as merely no-strike agreements and added that in the nonunion sector "we don't have strikes."

Hence, concerns over the further erosion of market share are at least one reason—and likely the principal reason—why unions and signatory contractors are concerned about work disruptions. While the union sector can assure adequate staffing for large projects, it must also be concerned with interruptions in labor supply caused by disputes.

## **C. Dispute settlement**

### **1. Mechanisms in area agreements**

As mentioned above, the 1980 quote from Mills concerning the lack of grievance and arbitration machinery in the construction industry is largely a thing of the past. Grob (1999: 278) reports that: "[Grievance] procedures are almost universal. They are found in 1,026 of 1,070 (or 96%) of construction collective bargaining agreements in effect in 1994." But it should be remembered that construction agreements generally exclude more issues from the grievance/arbitration procedure than is common in most industries.

The typical grievance/arbitration procedure in construction has no more than three steps, beginning with the filing or oral presentation of the grievance by a worker, steward, or business agent with some representative of the employer (e.g. job

superintendent or project manager). In most cases, if the grievance is not resolved at the first step it is presented to a joint board or committee composed of an equal number of union and employer representatives. Such boards may have as many twenty members, but usually only two or four members are required to issue a decision. Contracts usually state that the decisions of such boards are final and binding. However, most agreements provide for a third step—presentation of the matter to a third party neutral—if the joint board is deadlocked or otherwise unable to resolve a grievance within an agreed upon period of time.

In construction, employers are allowed access to the grievance procedure. Employers' grievances usually concern the referral of workers (e.g. the union is not providing an adequate number of competent workers) or an alleged violation of a no-strike agreement.

Grievances involving jurisdictional disputes are nearly always excluded from the procedure, as are disputes over trust fund payments. Sometimes disputes over the payment of wages are also excluded. Unions often reserve the right to strike over employer delinquencies in wage or benefits' payments.

The Boilermakers Western States agreements states that "The hearing shall start as promptly thereafter [the selection of an arbitrator] and be conducted in an informal and 'layman like' manner." Another agreement reviewed discourages the use of attorneys at hearings.

When neutrals get involved in the settlement process, they may do so in several ways. In most cases, when a joint board is deadlocked, the grievance moves to the terminal step for settlement by a sole arbitrator. In other cases, a tripartite panel is formed with two members of the joint board and a neutral. Another possibility is that the grievance remains with the joint board, but with the ad hoc appointment of an arbitrator to the board to provide the tie-breaking vote. A further possibility is found in the Teamsters Craft Joint Adjustment Board in California, a standing body with nine union members, nine employer members, and a neutral chair.

There is nothing particularly distinctive about the appointment of arbitrators under construction agreements. Contracts usually allow the parties to designate an arbitrator by mutual consent or through the offices of the American Arbitration Association (AAA), the Federal Mediation and Conciliation Service (FMCS), or state agency. A number of contracts have individual named arbitrators or panels.

In most cases, the arbitrator's fee is split evenly by the parties. A California Operating Engineers agreement requires the loser to pay all. However, a number of contracts specify that payment is made by an administrative trust fund, which is supported by per capita contributions based on hours worked. In Southern California, for example, an administrative trust fund receives \$.03 for each hour worked by Carpenters.

A number of the contracts reviewed contain no mechanism for the referral of grievances to a neutral arbitrator. This is particularly true in the electrical contracting and sheet metal industries, which have longstanding, national level, bipartite boards that handle disputes; most local agreements in these industries refer to these mechanisms. In several other industries, however, the parties at the local level have their own joint boards as the terminal step in the process (see agreements for Chicago Cement Masons, Painters, and Plumbers and Pipefitters, for example).

One of the more highly developed joint processes is found in a New York City Painters' agreement. The contract calls for the creation of a Joint Trade Committee and a Joint Trade Board. Grievances that cannot be settled by a union steward and employer representative go to the Joint Trade Committee composed of at least two employer association representatives and two union representatives. If the Joint Trade Committee is not able to settle the matter, it then moves to the Joint Trade Board, which is composed of the president of the employers' association and the secretary-treasurer of the union, or their designees. The unusual feature of the New York agreement is a schedule of fines that may be imposed. For example, an employer who discriminates against a union steward is liable for lost wages and benefits, plus \$500 in liquidated damages; the use of nonunion labor is punishable by a fine of \$750 for each nonunion worker used, plus \$500 in liquidated damages, etc.

## **2. Mechanisms in PLAs**

### **a. The BCTD model agreement**

The BCTD developed a model PLA in 1997, which it revised in 2003. The model PLA includes three separate dispute settlement procedures: a "traditional" three step grievance/arbitration procedure, a procedure for the settlement of jurisdictional disputes, and an expedited arbitration procedure, included within an article on Work Stoppages and Lockouts. This latter procedure was included in the original model agreement, but is not included in the more recently revised agreement.

Article V of the revised model agreement offers language on strikes and lockouts. Section 1 contains a broad proscription on job actions: "...there shall be no strikes, picketing, work stoppages, slow downs or disruptive activity for any reason by the Union...and there shall be no lockout by the Contractor." Section 2 allows for disciplinary action against employees who engage in a proscribed activity and stipulates that such individuals shall be ineligible for rehire for at least for ninety days. Section 3 requires a General President to "use the best efforts of his office" to cause a local union to "cease violations of this Article."

However, several sections of the Work Stoppage and Lockouts article that were in the original model PLA have since been removed. Deleted are Section 4, which allowed a Contractor to suspend work in the event of a job action "without penalty," and Section 5, which made the union liable for liquidated damages if it participated in a job action. Most notably, Section 6, which provided for an expedited arbitration procedure that may have been used "in lieu of, or in addition to, any other action at law or equity," has been removed. The procedure called for a named arbitrator to hold a hearing within 24 hours of notice of a dispute. Only one hearing was allowed. The only issue before the arbitrator was whether there was a violation of the no-strike/no-lockout provision. The arbitrator was required to issue a decision within three hours of the hearing, and was allowed to order a halt to the job action. Section 6(e) specifically stated that the arbitrator's award was enforceable in court. Section 6(h) required the union to comply with the arbitrator's decision within eight hours or face liquidated damages, payable to the affected contractor, of \$10,000 for the violation itself and \$10,000 for each subsequent shift missed by employees. Although the expedited arbitration procedure is

no longer contained in the BCTD model, it is still present in many actual PLAs that were either negotiated before the new model agreement was issued or that simply vary from the model. The BCTD does not prohibit the use of such a procedure, it merely leaves the decision to include them up to the parties at the local level.

As mentioned, the model agreement also contains a typical multi-step grievance and arbitration procedure that may be used for “any questions or disputes arising out of and during the term of this Project Agreement.” Jurisdictional disputes are specifically excluded.

Step 1 of the procedure allows for any employee, through his or her local union business representative or job steward, to present a grievance to the contractor’s “work-site representative” within five working days of the occurrence of an alleged contract violation. The parties shall attempt to resolve the matter within three working days. Following any meeting with the union representatives, the contractor must issue a decision within 24 hours, and the union, if dissatisfied with the response, has 48 hours to proceed to Step 2.

The model agreement also allows unions and contractors access to the grievance procedure. In such cases, if the parties cannot settle their differences in three working days they may proceed to Step 2.

At Step 2, the contractor and an international union representative must meet within seven working days to attempt settlement. If settlement is not reached the parties have seven days to request arbitration.

The model agreement suggests that the parties mutually select an arbitrator, but if unsuccessful to turn to the AAA for a list. Further language requires the strict interpretation of time limits and instructs the arbitrator to consider only the issues before him or her, and to avoid changing, amending, adding to or detracting from the PLA.

Finally, the model PLA also provides for the settlement of jurisdictional disputes with reference to the Plan. That is, all jurisdictional disputes should be settled in accordance with the requirements and procedures of the Plan. The model PLA proscribes jurisdictional work stoppages. Pre-job conferences are also required as a means of forestalling jurisdictional disputes.

## **b. Actual PLAs**

Some of the differences in dispute settlement procedures between actual PLAs and the BCTD model are minor and more procedural than substantive. For example, there are slight differences in the number of arbitrators named to handle expedited complaints; liquidated damages may be higher than \$10,000; time limits in the grievance procedure sometimes vary; and the FMCS or state agencies are sometimes named as sources for arbitrators rather than the AAA. The discussion below focuses on more substantive matters.

### **i. Expedited procedures**

Beginning with the no-strike/no-lockout clauses, all of the agreements reviewed contain some type of guarantee that the project will be free of job actions. In most cases, such guarantees are very broad and cover all types of possible disputes. However, in about one-third of the PLAs reviewed, there is an explicit exemption for job actions

caused by an employer's delinquency in payments to joint trust funds. That is, even under the PLA, the unions reserve the right to strike if an employer falls behind or fails to make payments to health care or pension funds. However, it is also typical that when such a right is reserved, additional language requires the union to give an employer notice (five days, for example) before beginning a strike. As well, several of the agreements—including this example from Minnesota—state that the unions may withhold labor for non-payment to funds “provided such withholding of services shall not be accompanied by picketing, hand billing, or advising the public of the existence of a labor dispute against a delinquent employer.”

About half of the PLAs reviewed contain no expedited procedure for determining whether a proscribed job action occurred, nor any provision for the payment of liquidated damages. As mentioned above, this entire section has been repealed from the BCTD model agreement, perhaps due to its lack of popularity at the local level. In some of the PLAs lacking an expedited procedure a statement such as “...any aggrieved party may immediately commence an action for injunctive relief...” is included.

A number of the PLAs have language for the continuation of local terms and conditions in the event of an impasse in bargaining; they often also have language for the retroactive application of any new conditions after settlement.

## **ii. Typical grievance/arbitration procedures**

Most PLAs contain the three step grievance/arbitration procedure contained in the BCTD model either to the letter or with minor modifications for time limits, arbitrator selection, etc. However, nearly one-quarter of the agreements contain no special grievance/arbitration procedure, but state instead that grievances should be handled “per applicable local collective bargaining agreements.” A few PLAs require—as does a Wisconsin PLA—the parties to use the procedures in local agreements, but provide a mechanism “[i]n the event of a dispute arising under or concerning this Agreement, or if a local collective bargaining agreement does not contain a grievance/arbitration procedure.” A Michigan PLA includes a grievance/arbitration procedure, but specifically exempts electrical workers and sheet metal workers, in deference to their bipartite panels. A Connecticut agreement is completely silent concerning grievances and arbitration; one would assume that local procedures are used.

In most cases, the terminal step of the grievance procedure is a decision by a single arbitrator who is named in the agreement, chosen by AAA or FMCS procedures, or referred by a state agency. In a couple of cases, the PLAs provides for a tri-partite arbitration panel. A Pennsylvania PLA states that a three member arbitration panel shall include a union representative, contractor representative, and representative of the property owner. A PLA in Washington State specifically states that all prevailing wage disputes shall be referred to the director of the Washington Department of Labor and Industries.

A number of the PLAs limit the arbitrator to awarding no more than sixty days of back pay. A typical clause requires the property owner, construction manager, or general contractor to be apprised of any grievance actions involving subcontractors.

### **iii. Jurisdictional disputes**

Every PLA reviewed makes some mention of jurisdictional matters being handled by through the Plan. The model PLA includes four sections, which state: 1) work assignments are the contractors responsibility and should be made in accordance with the Plan (i.e. any past decisions or agreements), 2) if disputes arise they should be decided through Plan procedures, 3) no job actions should occur over such disputes and any individuals ceasing work are “subject to immediate discharge,” and 4) contractors must conduct pre-job conferences, presumably to head off jurisdictional disputes.

Language in the “scope of agreement” clause may also be used to forestall jurisdictional disputes. This is done by stating which work and which employees are not covered by the agreement. For example, manufacturers’ employees may be allowed to install certain equipment on a site.

A Washington PLA requires that each contractor and subcontractor develop a work assignment document fourteen days before beginning any work. Competing unions may present evidence for their claims at a pre-job conference, and then have seven days to respond to any decisions of the contractor. Only after the local procedure is exhausted are disputes referred to the Plan. An Ohio PLA allows for an arbitrator’s decision if a dispute before the Plan is not settled in fifteen days.

A few PLAs contain language to handle jurisdictional disputes involving non-BCTD unions and/or non-stipulating employers. A Massachusetts PLA, for example, places such disputes before an arbitrator who has fourteen days to hold a hearing and render a decision. The agreement specifically states that the arbitrator cannot assign work to a double crew, but may create a composite crew. Nearly identical language is included in a New York and Nevada PLA.

To conclude, one of the original and primary purposes of PLAs is to assure that projects are as free from work disruptions as possible. PLAs accomplish this goal through broad no-strike language, fast and harsh penalties for violations of such clauses, the use of grievance and arbitration procedures to handle most problems, and highly-developed methods to handle jurisdictional issues, such a pre-job conferences, detailed work assignment language, and methods for neutral settlement.

### **D. Conclusions**

Tensions between the union and open shop sectors of the construction industry have eclipsed the tensions between labor and management within the union sector. Today, labor-management relations are fairly cordial in most cases and highly-cooperative in many.<sup>2</sup> Nonetheless, the parties remain concerned about work disruptions since: 1) some of the distinctive institutions of construction labor relations increase the potential for disruptions, and 2) the lack of work disruptions over labor relations issues in the nonunion sector is a source of competitive advantage.

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<sup>2</sup> During the past decade or so, a number of labor-management cooperation committees have been formed in the industry around the country (sometimes with the help of FMCS funding). A number of these were formed primarily to promote the use of PLAs. Examples with which the author is personally familiar include the Connecticut Construction Labor-Management Council, the Rhode Island 21<sup>st</sup> Century Labor-Management Partnership, and the New England Laborers Labor-Management Cooperation Trust.

One method of forestalling work disruptions has been greater use of PLAs, which typically contain a number of features aimed at heading off disputes. These include strong no-strike language, heavy penalties for violating no-strike provisions, grievance and arbitration procedures, and detailed methods for dealing with jurisdictional matters.

## **Appendix A – A Brief History of PLAs**

### **Appendix B—Key Legal Case Citations on PLAs**

#### United States Supreme Court

Building and Construction Trades Council of the Metropolitan District v. Associated Builders and Contractors of Massachusetts/Rhode Island (507 U.S. 218; 142 L.R.R.M. 2649), United States Supreme Court, 1993.

In this seminal case, the U.S. Supreme Court determined that the Massachusetts Water Resources Authority was not preempted by the National Labor Relations Act in attaching a PLA to large sewage treatment project. The court found that authority was merely acting as a participant in the marketplace and not attempting to regulate an area of labor relations reserved to the federal government. The doctrine was established that public agencies would be able to use PLAs on a project-by-project basis, but would most likely face preemption if they attempted to require or prohibit PLAs on broad classes of projects.

#### United States Courts of Appeal

Alabama Power Company v. Local Union No. 1333 Laborers International Union of North America (734 F.2d 1464; 116 L.R.R.M 3209), United States Court of Appeals for the Eleventh Circuit, 1984

This case involved a walkout of workers in violation of a PLA no-strike clause. Although the union had urged the workers not to strike (over the termination of several workers) and made efforts to get the striking workers to return to work, the construction user, nonetheless, attempted to sue the union for damages claiming that it was responsible for the mass actions of its members. In this case, the court disagreed citing the efforts made by union officials to get their members to return to work.

Charles H. Lucas et al. v. Bechtel Corporation et al. (800 F.2d 839; 123 L.R.R.M. 2762), United States Court of Appeals for the Ninth Circuit, 1986

The plaintiffs in this case were two union electricians and their local union (IBEW Local 640). They filed suit against Bechtel and the national union claiming that the national union president violated the union's constitution as well as antitrust laws in signing a PLA with Bechtel that undercut the local union's collective bargaining agreement, without consent of the local union. The court, however, granted the defendants summary judgment because the plaintiffs were not proper parties to bring such a claim and because the court "could not say that the IBEW's interpretation of its constitution was unreasonable or made in bad faith."

Glenwood Bridge, Inc. v. City of Minneapolis (932 F. 2d 1239; 137 L.R.R.M. 2315), United States Court of Appeals for the Eighth Circuit, 1991

While not deciding on the merits of the case, the court upheld a lower court's denial of injunctive for the plaintiff. In this case, the plaintiff had been low bidder on bridge project, but lost the work after the city decided to reject all bids and issue a new request for bids with a PLA requirement. The plaintiff argued that its collective bargaining agreement with the Christian Labor Association Local 78 should have satisfied the city's concerns. The court found that Glenwood Bridge had not demonstrated irreparable harm.

Utah Construction and Development v. Reynolds Electrical and Engineering Co. (951 F.2d 1261), United States Court of Appeals for the Tenth Circuit, 1991.

In the case, the general contractor negotiated wage increase affecting employees of a subcontractor, but refused to allow the subcontractor to submit a change order to cover increased expenses. A PLA clause requiring strict adherence to labor agreements entered the plaintiff's arguments. The circuit court upheld the district court's grant of summary judgment.

Dillingham Construction, et. al. v County of Sonoma, et. al. (190 F.3d. 1034; 162 L.R.R.M. 2193) United States Court of Appeals for the Ninth Circuit, 1999.

Associated Builders and Contractors, et. al. v. The Massachusetts Water Resources Authority, et. al. (134 L.R.R.M. 2713) United States Court of Appeals for the First Circuit, 1990.

Associated Builders and Contractors, et. al. v. The Massachusetts Water Resources Authority, et. al. (935 F.2d 345; 137 L.R.R.M. 2249) United States Court of Appeals for the First Circuit, 1991.

Eisenmann Corporation v. Sheet Metal Workers International Association Local No. 24, AFL-CIO. (323 F. 3d 375; 172 L.R.R.M. 2001) United States Court of Appeals for the Sixth Circuit, 2003.

Northern Illinois Chapter of Associated Builders and Contractors, et. al. v. Jack Lavin, Director of the Illinois Department of Commerce and Economic Opportunity. (431 F.3d 1004; 178 L.R.R.M. 2650) United States Court of Appeals for the Seventh Circuit, 2005.

Building and Construction Trades Department, AFL-CIO v. Joe Allbaugh, Federal Emergency Management Agency, et. al. (295 F.3d 28; 170 L.R.R.M. 2449) United States Court of Appeals for the District of Columbia, 2002.

Labor Relations Division of Construction Industries of Massachusetts, Inc. et. al. v. International Brotherhood of Teamsters, Local 379 (29 F.2d 742; 146 L.R.R.M. 2979), United States Court of Appeals for the First Circuit, 1994.

Colfax Corporation v. Illinois State Toll Highway Authority, et. al. (79 F.3d 631; 151 L.R.R.M. 2938) United States Court of Appeals for the Seventh Circuit, 1996.

Enertech Electric v. Mahoning County Commissioners, et al. (85 F.3d 257; 152 L.R.R.M. 2496) United States Court of Appeals for the Sixth Circuit, 1996.

Phoenix Engineering, et. al. v. MK-Ferguson, et. al. (966 F.2d 1513; 140 L.R.R.M. 2546) United States Court of Appeals for the Sixth Circuit, 1992.

Associated General Contractors of America, San Diego Chapter, Inc. v. Metropolitan Water District of Southern California, et. al. (159 F.3d 1178; 159 L.R.R.M. 2588) United States Court of Appeals for the Ninth Circuit, 1998.

Dwayne Alexander et. al. v. Local 496 Laborers International Union of North America et. al. (177 F.3d 394) United States Court of Appeals for the Sixth Circuit, 1999.

#### United States District Courts

J.A. Cavaness Steel Erectors v. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 709, et. al. (123 L.R.R.M. 3120), United States District Court for the Northern District of Alabama, Southern Division, 1986

Swinerton & Walberg Co. v. United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry of the United States and Canada Local 3, et. al. (806 F. Supp. 913), United States District Court for the District of Colorado, 1992.

Minnesota Chapter of Associated Builders and Contractors, Inc, et. al. v. The County of St. Louis, et. al. (825 F. Supp. 238), 1993.

Shean Fitzgerald v. International Union of Operating Engineers, Local 701 (150 L.R.R.M. 2895) United States District Court for the District of Oregon, 1995.

Ray Angelini v. City of Philadelphia (984 F. Supp. 873) United States District Court for the Eastern District of Pennsylvania, 1997.

Oil, Chemical & Atomic Workers Int'l Union, AFL-CIO, et. al. v. Federico Pena (18 F. Supp. 2d 6) United States District Court for the District of Columbia, 1998.

David Hanten et. al. v. The School District of Riverview Gardens, et. al. (13 F. Supp. 2d 971; 158 L.R.R.M. 2714) United States District Court for the District of Missouri, Eastern Division, 1998.

Albany Specialties, Inc. v. Board of Education of South Glen Falls School District, et. al. (162 L.R.R.M. 3071) United States District Court for the Northern District of New York, 1999.

Kiewit/Atkinson/Kenny v. International Brotherhood of Electrical Workers, Local 103, AFL-CIO (76 F. Supp. 2d 77) United States District Court for the District of Massachusetts, 1999.

Building and Construction Trades Department, AFL-CIO v. Joe Allbaugh, Director Federal Emergency Management, et. al. (172 F. Supp. 2d. 67; 196 L.R.R.M. 3050) United States District Court for the District of Columbia, 2001.

Shank/Balfour Beatty v. International Union of Operating Engineers. Local Union No 12 (170 L.R.R.M. 2127) United States District Court for the Central District of California, Eastern Division, 2000

Trustees of the Bricklayers and Allied Craftworkers, Local 5 New York Retirement, Welfare, Apprenticeship Training and Journeyman Upgrading and Labor-Management Cooperation Funds, et. al. v. Stephen Driscoll (165 F. Supp 2d. 502) United States District Court for the Southern District of New York, 2001

Associated Builders and Contractors of Rhode Island, et. al. v. City of Providence (108 F. Supp. 2d 73; 165 L.R.R.M. 2076) United States District Court for the District of Rhode Island, 2000

Building and Construction Trades Department, AFL-CIO, et. al. v. Joe M. Allbaugh, Director of Federal Emergency Management Agency, et. al. (172 F. Supp. 2d 138; 168 L.R.R.M. 2737) United States District Court for the District of Columbia, 2001.

Yonkers Electric Contracting Corp. v. Local Union No. 3 International Brotherhood of Electrical Workers, et. al. (220 F. Supp. 2d 254) United States District Court for the Southern District of New York, 2002

Twin City Sprinkler Fitters, Health Care Plan, et.al. v. Sprinkler Fitters Local 417 (171 L.R.R.M. 3275) United States District Court for the District of Minnesota, 2002

Ralph Bonquist et. al. v. Inner City Carpentry, Inc. (244 F. Supp. 2d 154) United States District Court for the Eastern District of New York, 2003

Shank/Balfour Beatty v. International Union of Operating Engineers, Local No. 12 (173 L.R.R.M. 2056) United States District Court for the Central District of California, 2003

STS Consultants, Ltd. v. International Union of Operating Engineers, Local 150 (174 L.R.R.M. 2403) United States District Court for the Northern District of Illinois, Eastern Division, 2003

Trustees of the Construction Industry and Laborers Health and Welfare Trust, et. al. v. Summit Landscape Companies, Inc. (309 F. Supp. 2d) United States District Court for the District of Nevada, 2004

In the matter of the application of Coast to Coast Installations v. Iron Workers Locals 40, 361 & 417 Union Security Funds and Iron Workers Local 417 (174 L.R.R.M. 3010) United States District Court for the Southern District of New York, 2004

Timothy Ryan v. Sprinkler Fitters Local 417 (174 L.R.R.M. 3272) United States District Court for the District of Minnesota, 2004

HRH Construction v. International Union of Elevator Constructors, AFL-CIO (176 L.R.R.M. 2737) United States District Court for the Southern District of New York, 2005

Metropolitan Milwaukee Association of Commerce v. Milwaukee County (359 F. Supp. 2d 749; 176 L.R.R.M. 2982) United States District Court for the Eastern District of Wisconsin, 2005

### State High Courts

Master Builders of Iowa et al. v. Polk County, Iowa (653 N.W. 2d 382; 172 L.R.R.M. 2424). Supreme Court of Iowa, 2002, Justice Larsen, dissenting.

The court considered whether a PLA entered into by the Polk County Board of Supervisors and the Central Iowa Building and Construction Trades Council for an “events center” violated either the state’s “right-to-work” statute, its competitive bidding statute, ERISA, or various sections of the constitution. The court’s majority found “no infirmity” with the PLA and concluded that the “use of the PLA for the Iowa Events Center is permissible under Iowa and federal law...

Connecticut Associated Builders and Contractors et al. v. Theodore Anson (251 Conn. 202; 740 A.2d 804; 163 L.R.R.M. 2020). Supreme Court of Connecticut, 1999, Justices Berdon and McDonald, dissenting.

The Connecticut Supreme Court agreed with a lower court that the Connecticut ABC had no standing to file suit against a PLA for buildings being constructed at Central Connecticut State University, since none of its members had actually bid on or could establish that some harm had been done to them by the PLA. The organization's philosophical objection to PLAs did not provide it with sufficient standing to file suit.

Connecticut Associated Builders and Contractors et al. v. City of Hartford (251 Conn. 169; 740 A. 2d 813; 163 L.R.R.M. 2007). Supreme Court of Connecticut, 1999, Justices Berdon and McDonald, dissenting.

This is a companion case to *Connecticut ABC v. Anson*. The issue and conclusion are the same. Connecticut ABC has no standing to file suit over a PLA when none of its members actually submitted bids on the project—in this case a municipal parking garage in the City of Hartford.

Laborers Local # 942 v. Deborah Lampkin, et al. (956 P.2d 422; 157 L.R.R.M. 2985). Supreme Court of Alaska, 1998, Justice Matthews, dissenting.

The Supreme Court of Alaska upheld the use of a PLA for a school project in the City of Fairbanks. In doing so, the court also reserved a lower courts decision to set aside the hiring hall provisions in the PLA and to amend the fringe benefit provisions.

Associated Builders and Contractors, Inc., Golden State Chapter et al. v. San Francisco Airports Commission (21 Cal. 4<sup>th</sup> 352; 981 P, 2d 499; 161 L.R.R.M. 3166). Supreme Court of California, 1999.

The California Supreme Court upheld the use of the Project Stabilization Agreement on the San Francisco International Airport. And, in so doing, the court rejected ABC's arguments that the PSA violated bidding statutes and state labor laws and the ABC's constitutional rights of association and equal protection.

John T. Callahan & Sons, Inc. v. City of Malden (430 Mass. 124; 713 N.E. 955), Supreme Judicial Court of Massachusetts, 1999.

While granting nonunion firms that had not bid on the project standing to challenge the PLA for \$100 million worth of school construction in the City of Malden, the Massachusetts Supreme Judicial Court nonetheless upheld the use of a PLA for the project. The court, however, made particular note of the "size, duration, timing, and complexity" of the project (three schools were being demolished and five new schools built) and suggested that all four variables were key in justifying the PLA. The court wrote "In most circumstances, the building of a single school will not, in and of itself, justify the use of a PLA.

Associated Builders and Contractors, Inc., Southern Nevada Chapter v. Southern Nevada Water Authority (115 Nev. 151; 979 P.2d. 224; 161 L.R.R.M. 3537), Supreme Court of Nevada, 1999.

Southern Nevada ABC objected to the Southern Nevada Water Authority's use of a PLA on a large waterworks project. The suit was brought when an ABC member (and successful bidder) was disqualified from working on the project after refusing to sign the PLA. ABC argued that the PLA violated Nevada's bidding statutes, right-to-work law, and the freedom of association of Nevada workers. The court rejected all three arguments and upheld the PLA. It should be noted that to conform with the right-to-work law, the PLA did not require union membership by workers on the project.

*George Harms Construction v. New Jersey Turnpike Authority* (137 N.J. 8; 644 A.2d 76; 146 L.R.R.M. 3037), Supreme Court of New Jersey, 1994, Justices Handler and Wilentz, concurring.

*George Harms Construction* was the low bidder to widen of a portion of the New Jersey Turnpike. However, Harms's employees were represented by the Steelworkers, while the turnpike authority had signed a PLA with the local building and construction trades council (of which the Steelworkers are not a member). The New Jersey Supreme Court voided the PLA writing that the agreement, in effect, gave the BCTC "sole source" treatment for the provision of labor, in violation of New Jersey's bidding statutes that are designed to foster "unfettered competition" in public contracts.

*Tormee Construction, Inc v. Mercer County Improvement Authority* (143 N.J. 143; 669 A.2d 1369; 151 L.R.R.M. 2440), Supreme Court of New Jersey, 1995, Justices Handler and Wilentz, dissenting.

In this case, the Mercer County Improvement Authority had included a PLA requirement in its request for bids for the construction of a new library. Although the PLA did not reference the BCTC (to avoid the problems identified in the *George Harms* case), the New Jersey Supreme Court still set aside the PLA finding the library was a "routine" construction project that did not have the "size, complexity, and cost" to justify a PLA.

*Associated General Contractors, et al. v. New York State Thruway Authority; General Building Contractors of New York State v. Dormitory Authority of the State of New York* (88 N.Y. 2d 56; 666 N.E. 2d 185; 151 L.R.R.M. 2891), Court of Appeals of New York, 1996, Justice Smith, dissenting.

The New York Court of Appeals consolidated two cases, both of which concerned PLAs. The Thruway case involved a PLA that was attached to the renovation of the Tappan Zee Bridge. The Dormitory Authority case involved the construction of buildings at the Roswell Park Cancer Institute. The Court of Appeals determined that the Tappan Zee Bridge PLA was justified in that Thruway Authority had established that the PLA served the public's interest by saving money and assuring the timely completion of a potentially disruptive highway project. However, the Court found that the Roswell Park PLA violated state bidding statutes since the Dormitory Authority had arbitrarily attached a PLA to the project even after some bids had already been awarded. The court established the doctrine (adopted by other several other states) that state bidding law neither

absolutely prohibits nor absolute permits PLAs, but that the attachment of a PLA to a project must come after rational consideration of its costs and benefits and advance the “interest underlying competitive bidding laws.”

Ohio State Building & Construction Trades Council et al. v. Cuyahoga County Board of Commissioners et al. (98 Ohio St. 3d. 214; 781 N.E. 2d 951; 172 L.R.R.M. 2019), Supreme Court of Ohio, 2002, Justice Douglas, concurring.

During consideration of a PLA for a juvenile detention center in Cuyahoga County, the Ohio legislature passed a law prohibiting public entities from entering into PLAs. In turn, the Cuyahoga County Board of Commissioners withdrew the PLA. The local BCTC sued claiming that such a broad proscription on PLAs by a state legislature was preempted by the National Labor Relations Act. The Ohio Supreme Court agreed and threw out the law.

Steven Novick v. Hardy Myers (332 Ore. 493; 32 P. 3d 890), Supreme Court of Oregon, 2001; Steven Novick v. Hardy Myers (332 Ore. 522; 32 P. 3d 894), Supreme Court of Oregon, 2001.

The issue in this case was whether the instructions accompanying a ballot initiative designed to prohibit public sector PLAs would mislead voters. The original wording stated that the ballot initiative “eliminates” “requiring labor agreements” on public projects. The objection was that the instructions suggested that Oregon law required labor agreements (i.e. PLAs) on public projects, which it did not. In the subsequent case, the court approved language stating that the ballot measure “prohibits union-worker preferences and requiring labor agreements.”

Associated Builders & Contractors of Rhode Island, Inc. et al. v. Department of Administration (787 A.2d 1179; 170 L.R.R.M. 2054) Supreme Court of Rhode Island, 2002.

This suit arose over a PLA attached to athletic facilities at the University of Rhode Island. Bidding for the facilities was done in stages and several bids had already been awarded when the state, at the urging of the construction manager, attached a PLA to remaining bids. The Rhode Island Supreme Court found that the PLA was inappropriate since that state had not established that the size and complexity of project called for a PLA and that the PLA advanced the goals of the state purchases act. The court did not stop the project or award any damages, since the project was close to completion.

## Appendix C – Choosing a PLA Negotiation Team

To repeat a key point in this work's Introduction—this is NOT a 'how to book' on PLA writing or PLA negotiation. There are a number of considerations an owner should consider in determining an appropriate 'PLA team'.

First and foremost, a PLA must reflect the needs of the project. The owner's consultant(s) should define the reasons a PLA is desirable—and the issues a PLA should address. This requires a firm understanding of the project's demands based on scope and type and the market conditions that make—or don't make—a PLA potentially suitable for the project. Does the consultant know this kind of construction project?

Second, does the consultant understand the labor conditions in the project area and the local bargained agreements in the Building Trades? Is there a repore between the consultant(s) and the respective Building Trades Council?

Third, what is the consultants' familiarity with Project Labor Agreements? Is the experience with PLAs as a negotiator-- Or as a PLA administrator--Or as a cost consultant—Or all of these roles?

Fourth, as to public projects—Does the negotiation team understand the particular requirements of that state?

The work required for a PLA can be viewed as having distinct components:

1. The study of the feasibility of a PLA based on market conditions and legal constraints. Related, identifying an initial 'list' of features in a PLA that would be most desirable based on the projects specific issues.
- 2A. Negotiating the principal PLA provisions with the building trades.
- 2B. The drafting of the PLA agreement based on the successful negotiation.
3. The administration of the PLA during the project.

A key element to the owner and consultant relationship on PLAs is an understanding the owner's 'bottom line' in looking for a PLA. The vast majority of all construction in the United States is done without a PLA. How necessary is a PLA to the owner? Unlike the local collective bargaining generally done by employer associations for unionized contractors—the owner doesn't absolutely have to have a PLA. This generally gives the owner some ability to get some accommodations from the building trades--- unless the location, size and type of construction project are 'totally union'. The consultant must guide the owner as to the merits of the PLA that can be negotiated—as compared to the initial 'wish list'. [See Appendix D as to 'pros and cons' of PLAs--- consider this as a start on the 'homework' for an owner looking at the use of a PLA for the first time.]

Many firms experienced in the unionized construction environment can perform the third component but need particular assistance in either of the first two components- or both. Very few CM firms have the 'in-house' legal capabilities/expertise for agreement drafting. Should the owner have a firm that studies and negotiates the PLA—but will not

serve as the PLA administrator—provisions should be made to provide services during construction. (This last point is particularly important where a PLA will cover several or more construction contracts where the general contractor of each phase/location will act as administrator--- often the case with school district PLAs for multiple projects.)

Finally, be guarded as to those who claim to PLA experts. While there is any number of firms/individuals with PLA expertise--- that experience is often limited to particular locations and/or types of construction. The firm/individual with extensive experience with PLAs for large public buildings in the Northeast may not have the expertise for a PLA for an industrial project in Michigan or heavy construction in California.

#### **Appendix D—‘Pros and Cons’ on PLAs- A Short Review**

#### **Appendix E--- Some Recent Innovations in Site Labor Agreements by Constructors**