

Workforce Models for Major Project Construction

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Project stability, cost stability and a qualified workforce: these are the primary objectives of project owners and contractors involved in major project construction. These objectives are not new but will become increasingly important as the anticipated construction of LNG facilities, utilities and infrastructure projects get underway in British Columbia. Projections of skills shortage in certain trades combined with an increasing demand for labour will magnify the importance of obtaining and retaining a qualified construction workforce to deliver projects on time and on budget.

It is fair to say that if all of the projects in the pipeline come to fruition, there will be an “all hands on deck” requirement for qualified labour, drawing upon skilled trades workers in British Columbia, across Canada and internationally. To secure a supply of skilled labour, project owners or EPCMs¹ will want the participation of as many contractors as possible, whether they are members of the building trades unions², wall-to-wall construction unions, or are non-union. Where the project involves public funding, policy initiatives may also be in play such as local hiring, training, First Nations involvement and the involvement of traditionally underrepresented groups in construction.

With these considerations in mind a workforce model that provides project stability, avoids escalating labour costs and also delivers qualified workers would be highly desirable and beneficial for project owners and prime contractors.

¹ EPCM contractors provide engineering, procurement and construction management for large projects in the infrastructure, mining and energy sectors.

² Building trades unions represent construction workers on a craft basis. A construction contractor may have collective agreements with various building trades unions. A wall-to-wall construction union represents all construction workers of a contractor. The BC Labour Relations board permits both types of representation.

Major project construction in B.C. recently has been performed on an “open site” or “open shop” basis³, and also under a project labour agreement⁴ (PLA) with building trades unions. The proponents of open site construction argue that it is beneficial because it supports competitive bidding and the supply of labour. Proponents of project labour agreements with building trades unions point to project stability derived from no strike/lockout provisions, and the supply of a highly qualified labour force secured through union hiring halls. These two models, however, are not the only options available. This short article briefly sketches out some alternative approaches.

PLAs in the United States

The debate between open site construction and project labour agreements may be relatively new to British Columbia, but it is a debate of long standing in the United States. The *National Labour Relations Act*, 29 U.S.C. §§ 151-169, Sections 8(e) and (f) allow for construction industry pre-hire and restrictive subcontracting agreements. Project labour agreements have been utilized on both private and public works projects. Their use was challenged by open shop contractors on the basis that they were contrary to State competition laws. In its landmark decision in *Boston Harbor (1993)*⁵, however, the US Supreme Court upheld the right of state, county and municipal agencies to utilize project labour agreements in furtherance of public policy initiatives. In a 1996 decision, *Thruway Authority*⁶, the New York Court of Appeals established guidelines for the use of project labour agreements for publically funded construction. Project labour agreements have also been used extensively in the private sector in

³ In open site or open shop construction, a contractor need not be affiliated with a union, or any particular union. Work on the project is covered by the individual contractor’s terms of employment or collective agreement.

⁴ A project labour agreement is an agreement executed by either the project owner or prime contractor with a union or group of unions to govern all terms and conditions of employment on the project.

⁵ [Building and Constr. Trades Council v. Associated Builders and Contractors, 113 S. Ct. 1190 \(1993\)](#)

⁶ [Mancuso v. New York State Thruway Authority 86 F3d 289](#)

the U.S. In the last two decades, for example, Disney, Toyota, General Motors and Trans Alaska Pipeline have all used project labour agreements.

Public sector PLAs in the U.S. allow contractors to bid on the project regardless of union affiliation. However the contractor must perform work on the project under the terms of the PLA. Typically, a PLA is negotiated with building trades unions, general project labour is dispatched through union dispatch halls, and the contractor's core labour is usually permitted on a ratio basis through a name hire process. The workers of non-union contractors must join the signatory union and pay dues in order to be dispatched to the project. PLAs typically contain a provision that precludes discrimination by signatory unions against non-union workers in dispatching to the project. In the private sector, PLAs can be restricted to building trades contractors. Public sector PLAs cannot lawfully exclude non-union contractors.

Opponents of PLAs argue that they raise the cost of projects and discourage non-union or open shop contractors from bidding on the work. Such agreements generally outline travel time, shift premiums, weekend overtime and so on, and therefore provide consistency for employees and potentially greater project stability. Advocates of PLAs argue that this stability and greater cost certainty are important for large projects.

In the U.S., particularly in public sector construction, the project owner or EPCM will typically negotiate a PLA in advance of tendering construction contracts, and require the adoption of the PLA as a bid requirement. Proponents for this model argue that by negotiating wages for the project, contractors bidding on the project can accurately estimate labour costs and therefore provide more accurate bids that will keep the project on budget.

The debate has also played out in the White House. In 1992, President George H. W. Bush issued an Executive Order forbidding the use of PLAs on federally funded projects. The Clinton administration rescinded that Order in February 1993. President George W. Bush cancelled the Clinton Order on February 17, 2001 by issuing an Executive Order once again prohibiting PLAs on federally funded projects. The US guidelines flipped once again when President Obama issued an executive order on February 6, 2009 encouraging federal agencies to use PLAs on large scale projects.

PLAs in Canada

Historically, project labour agreements in Canada have historically been exclusive to building trades unions. Such agreements are similar to the construction industry standard agreements negotiated with the same unions, but can include provisions to provide consistency across participating unions. They also sometimes “enable” certain standard provisions to facilitate the competitiveness of the building trades to attract the work and also contain provisions precluding work stoppages and picketing for the duration of the project.

In British Columbia, the construction of hydroelectric dams in the 1960s and the refurbishing and expansion of certain dams beginning in the 1990s and continuing to today was accomplished under a form of project labour agreement negotiated for B.C. Hydro through its wholly owned subsidiary, Columbia Hydro Constructors Ltd. This model closely resembles the project labour agreements in the US, where the owner negotiates the PLA and stipulates its terms in the bid requirements.

Other examples of PLAs in the private sector in B.C. include major projects involving Rio Tinto Alcan where the prime contractor, Bechtel, negotiated a project labour agreement with building trades unions through the vehicle of a contractors association. The agreement was structured so all contractors awarded work on the project must belong to the contractors association which is signatory to the PLA. Building trades PLAs have also been negotiated for an expansion at Endako mine, and more recently for the John Hart Generating Station Replacement in Campbell River. The Christian Labour Association of Canada (CLAC), which represents construction workers on a wall-to-wall basis, has negotiated “pre-job” agreements for major projects such as the Cabin Gas Plant near Fort Nelson.

Project labour agreements are acknowledged and supported in labour relations legislation in Alberta⁷ and Ontario⁸. The BC *Labour Relations Code* contains no provisions with respect to

⁷ [Alberta Labour Relations Code, Division 8, Collective Agreements Relating to Major Construction Projects](#)

⁸ [Ontario Labour Relations Code, s. 163.1](#)

project labour agreements, but they are not precluded either. The Labour Relations Board has confirmed the validity of project labour agreements in a number of its decisions.

To constitute a valid collective agreement, the project labour agreement must be between an “employer” and a “trade union”. Thus, while a project owner may negotiate a PLA with a union or group of unions, the PLA essentially becomes part of the procurement terms that will form part of the bidding requirements. The PLA does not become a “collective agreement” until an employer of construction workers adopts the agreement (which it would be commercially obliged to do). On the union’s side, our Labour Relations Board has recognized pre-hire agreements with building trades unions, holding that the operation of a hiring hall is a proxy for membership ratification of the agreement. The Labour Relations Boards in Alberta and Ontario have extended that reasoning to the non-building trades construction unions.

Other options

Given the size and number of major construction projects currently under consideration in British Columbia, project owners and contractors will be seeking the labour model that best suits their particular project. It may be “open site” whereby the owner or EPCM accepts bids from any qualified contractor. Without specifying labour terms, this model potentially leaves the project vulnerable to labour disruption (strikes/lockouts), productivity issues arising from different employment conditions for workers on the same site, and a lack of coordination of labour relations and safety on the site. At the other end of the spectrum is a project labour agreement with building trades unions which guarantees labour stability and provides consistency on key employment terms, but may restrict competitive bidding by non-union contractors (or non-building trades contractors) who are not enthusiastic about signing on to a building trades project labour agreement.

There are, however, variations on these themes. Examples exist of contractors or consortiums entering into project labour agreements with building trades unions for the purpose of bidding on the project. In other words the PLA is in place if the contractor, or consortium, is awarded the contract. As such, the proponent is able to demonstrate to the owner that it can provide labour cost stability and project stability through the PLA.

Another option is for the project owner to negotiate labour terms of procurement (in the form of a PLA) with a union or group of unions and then include those terms in the bid qualifications. Contractors submit bids knowing that they will be bound by the terms of the PLA. This may limit bidding only to contractors who already have agreement with unions that are signatory to the PLA.

Alternatively, a project owner could simply stipulate all of the terms one might expect to see in a project labour agreement, in the bid requirements, leaving it to the contractors to secure agreements with their unions to modify the terms of their own collective agreements to conform to the project bid requirements. The ability of a unionized contractor to bid on a project will be contingent on that contractor negotiating these terms with its union.

These models are often referred to as a “managed open site”.

There is no reason why a hybrid of the open site or managed open site model and the project labour model cannot be created. For example, a project labour agreement need not be negotiated exclusively with building trades unions. It conceivably could be negotiated with both building trades and other construction unions and provide terms and conditions for non-union construction workers on the project as well. The Canadian National Resources Limited, Horizon Oils Sands Project⁹ in Alberta provides an example of multiple PLAs to accommodate the engagement of both building trades and non-affiliated construction unions.

A project labour agreement might consist of a general section setting out terms applicable to all employees and then contain sub-agreements applicable to particular unions or groups of unions, or applicable to different phases of the project. Its terms could also apply to non-union contractors working on the project. In other words, a project labour agreement can be designed to achieve the objective of labour stability, cost certainty, and the supply of qualified labour regardless of the union status of the contractor. The PLA could also facilitate public policy or social license objectives such as those relating to training, local hiring, and First Nations’ involvement.

⁹ [Canadian Natural Resources - Horizon Project Labour Agreements](#)

Permitting non-union contractors to participate on the project with their own workforce has the advantage of opening another source of labour supply, but the disadvantage of creating potential labour risk if that contractor organized during the project with the union having the attendant right to strike and picket. That possibility can be covered in a PLA which would subsume the non-union contractor within a defined multi-employer, multi-union bargaining unit if the contractor was organized by a signatory union.

Our Labour Relations Board issued a significant decision on April 10, 2014¹⁰ where it recognized that the Rio Tinto PLA created a single multi-employer multi-union bargaining unit for representation purposes; thus precluding segmentation of the PLA workforce.

Conclusion

As we move into a period of tighter labour supply, greater labour demand and potential skill shortages, we are likely to see more consideration of labour models that can deliver the objectives that project owners, construction contractors and, on public projects, the government wishes to achieve. Those options are not limited to an open shop or open site model or a project labour agreement with building trades unions. There are variations between those models that can be considered to ensure a successful project outcome.

¹⁰ [*Kitimat Modernization Employer Association et al v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local No. 97 BCLRB No. B111/2014*](#)