GOVERNMENT MANDATED LABOR AGREEMENTS IN PUBLIC CONSTRUCTION

Their History and Factors to Consider

Table of Contents

all construction workers. In 1973, unions represented 40.1 percent. However, in 1999 unions represented only 19.6 percent of the construction work force and the necessity and utility of project labor agreements as a competitive vehicle has diminished along with union representation in the industry.

It should also be noted that the industry has never universally supported project labor agreements as a means of enhancing competitiveness. Many contractors and subcontractors and their associations invest a great deal of time and resources to negotiate local area collective bargaining agreements with the individual building trade unions in their market. These agreements apply to all the work performed in a defined geographic area by the signatory contractors for the duration of their term, typically 3 years. They address all the terms and conditions included in project labor agreements, as well as circumstances unique to the local market.

Project labor agreements, by definition, are project-specific, with terms and conditions that are frequently different from those found in local agreements. Contractors and subcontractors competing for work on the basis of local agreements can be at a disadvantage. In addition, the terms and conditions of the project labor agreement can negatively impact negotiations on local agreements. The more frequently project labor agreements are used in an area, the less utility local collective bargaining agreements have. The incentive for their negotiation and execution frequently declines accordingly. Many construction labor impaCrTh3m9.4(

What are the Different Purposes of the
Traditional Agreements and the Government Mandates?

The traditional objective of a project labor agreement is to enhance the competitive posture of the signatory contractor with respect to a specific project. An agreement unique to the project may be preferable because the local collective bargaining agreements that would otherwise apply to the work for signatory contractors contain terms and conditions that are not as

(1) Whether GMLAs have a disproportionately adverse impact on minority and women business enterprises, in violation of Title VI of the 1964 Civil Rights Act and/or its state counterparts.

(2) Whether GMLAs violate the construction industry provisions of the NLRA permitting only employers "engaged primarily in the building and construction industry" to enter into prehire agreements.

(3) Whether GMLAs between an owner and a labor organization violate the NLRA prohibition against agreements restricting an employer's right to do business with any other employer or person.

(4) Whether the Competition in Contracting Act or other federal statutes prohibit GMLAs on federally funded construction.

(5) Whether state competitive bidding laws prohibit GMLAs.

What is AGC's Policy on Project Labor Agreements?

The Associated General Contractors of America, Inc., (AGC) does not oppose traditional project labor agreements. Even though they have some negative effects on local area collective bargaining, AGC strongly supports open competition and the traditional agreements have tended to encourage such competition. Without hindering other firms, or dictating labor policy for other firms, these agreements have enabled some union contractors to be more competitive.

AGC is committed to free and unrestricted construction markets. AGC opposes the imposition of exclusionary project labor agreements by public owners, or their representatives, on any publicly funded construction project. A public owner or its representative should not require the use, or negotiation, of a government mandated labor agreement that would compel any firm to change its labor policy or practice in order to compete for or to perform work on a publicly financed project.

AGC believes that GMLAs on publicly funded construction are a solution in search of a problem. AGC is not aware of any documentation that indicates that the terms and conditions allegedly ameliorated by GMLAs (work stoppages and labor unrest, uniform work rules and providing labor through union hiring halls) have materially impacted the costs or schedules of public construction, or that free and open competition without the impediments created by GMLAs are not equally effective. Likewise, there is no evidence that public resources are used in a more productive fashion by imposing the same one-size-fits-all agreement on all competitors for public works.

To the extent that GMLAs remove the free market economic forces that underlie both the competitive bidding laws and the collective bargaining process, they subvert the objectives of those laws and that process and make it difficult, if not impossible, for the public to benefit from the full competition that it is entitled to expect. AGC does not believe that this is a proper role for government at any level or a proper use of public funds.

GOVERNMENT MANDATED LABOR AGREEMENTS
IN PUBLIC CONSTRUCTION: FACTORS TO CONSIDER

Questions That Public Officials and
Their Representatives Need to Address

1. How is labor policy normally addressed on publicly awarded construction projects?

2. Have any publicly awarded construction projects suffered from any of the problems allegedly addressed by government mandated labor agreements (GMLAs), such as labor unrest or labor shortages? If so, did they affect the cost or completion of the project?

3. What firms normally perform the same type of project in the private and public markets for which a GMLA is being contemplated? Are the contractors and subcontractors that normally perform this type of construction union or open shop?

4. How would a GMLA affect the ability of open shop contractors and subcontractors in the area to compete for and perform work on a project subject to a GMLA?

5. How many contractors and subcontractors that normally compete for and perform public construction work are signatory to local area collective bargaining agreements with the building trade unions? How would a GMLA impact the union contractors and subcontractors that normally compete for and perform public construction work?

6. What are the terms and conditions of those local area collective bargaining agreements?

   Note: It is important to know the characteristics of the market to determine whether a GMLA is appropriate or necessary. In a market dominated by the open shop sector, unions may not be able to provide the quantity of workers necessary to perform the project. In addition, many local area collective bargaining agreements already contain the benefits that GMLAs are said to provide, such as common grievance and arbitration procedures among crafts, common jurisdictional dispute resolution procedures, common work rules, hours of employment, holiday and shift provisions, and no-strike and no-lockout clauses.

Note: Because of their mandatory character and the typical inexperience of those often negotiating their terms, GMLAs frequently include costly terms and conditions. In addition, GMLAs can impact local area collective bargaining. GMLAs can set patterns and establish precedents for the industry that do not exist in either the public or private sector.

9. Will the project be subject to a prevailing wage law? If so, how would the requirements of the law differ from the provisions of a GMLA with respect to wages, fringe benefits and labor practices?

10. Would a GMLA require all contractors and subcontractors performing work on the project to become signatory to it?

11. Would a GMLA supercede all other existing agreements?

12. Are the unions that would be signatory to a GMLA the same unions that are signatory to the local area collective bargaining agreements?

13. Would a GMLA require contractors and subcontractors signatory to local area collective bargaining agreements to assign work to unions with which they have no prior affiliation or experience?

    Note: Open shop contractors have the flexibility to subcontract work to companies based upon cost-effective bids and performance, and to assign work according to the skill level it requires. Contractors signatory to local area collective bargaining agreements frequently have the same flexibility. In addition, many union general contractors are signatory to agreements with only two or three unions. A GMLA may require a contractor to employ the members of new or different unions, as well as comply with the wage, benefit and labor practices of as many as 15 different unions.

14. Would a GMLA require contributions to union benefit funds? If so, would union and open shop contractors be required to continue to contribute to existing funds, as well as additional union funds, to maintain benefits for their employees? Would those contractors' employees actually benefit from these additional contributions to the union funds?

    Note: Most construction benefit programs require uninterrupted contributions on behalf of participating employees to maintain coverage and eligibility. Benefit funds normally have time-based vesting and eligibility requirements that must be met before benefits can be received. Most employees that are not already members of the GMLA signatory unions before starting work on the project will not qualify for union benefits because of these requirements. In fact, some of these employees may actually lose some or all of their benefits.

15. Would a GMLA require all craft employees to become members of one or more designated trade unions? What is the ratio of union and nonunion construction craft workers in the local area?

Note: Employees not previously represented by a union will be under the terms of most GMLAs, regardless of their wishes and without an opportunity to vote on their preference. This may reduce the number of craft workers that would otherwise be interested in employment on the project.

16. Would a GMLA require all craft employees to become union members and pay union dues, or agency fees in lieu of dues in right-to-work states?

17. Would a GMLA require that all craft employees be hired through a referral from a union hiring hall? How many employees would be exempt from this requirement? What would be the hiring hall registration requirements and preferences? How would the GMLA affect the ability of contractors and subcontractors to employ their regular work force?

Note: The registration requirements and preferences of union hiring halls often require that workers be referred to projects based on previous union employment.

18. Would a GMLA provoke a judicial challenge? Would it be vulnerable to challenge under federal, state or local laws? Would such a challenge increase the cost of the project or delay its initiation and completion? Would a public hearing be required or appropriate under the relevant procurement laws and regulations?

Note: Many GMLAs have been challenged and overturned under state competitive bid

If, after carefully considering all the above factors and other considerations, public officials or their representatives believe that a government mandated labor agreement is appropriate, the local chapter of the Associated General Contractors of America should be contacted for assistance in negotiating its terms and conditions.