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Project Labor Agreements

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Project Labor Agreements

Abstract

[Excerpt] The National Labor Relations Act of 1935 (NLRA) gives most private sector workers the right to join or form a labor union and to bargain collectively over wages, hours, and working conditions. The act allows workers in the construction industry to enter into a collective bargaining agreement (CBA) before a project begins. A project labor agreement (PLA) is a collective bargaining agreement that applies to a specific construction project and lasts only for the duration of the project. In February 2009, President Barack Obama signed Executive Order 13502, which encourages federal agencies "to consider requiring" the use of PLAs on large-scale construction projects. Regulations implementing the Executive Order (EO) went into effect in May 2010. This report begins with a description of PLAs. It then describes President Obama's EO and summarizes regulations to implement it. The report then examines arguments for and against these of PLAs and reviews research on the economic effects of the agreements.

Keywords

project labor agreement, PLA, construction, worker rights

Comments

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Project Labor Agreements

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Summary

The National Labor Relations Act (NLRA) gives most private sector workers the right to join or form a labor union and to bargain collectively over wages, hours, and working conditions. The act allows workers in the construction industry to enter into a collective bargaining agreement before a project begins. A project labor agreement (PLA) is a collective bargaining agreement that applies to a specific construction project and lasts only for the duration of the project.

In February 2009, President Barack Obama signed an Executive Order (EO) that encourages federal agencies "to consider requiring" the use of PLAs on large-scale construction projects. The EO defines a large-scale project as one where the total cost to the federal government is \$25 million or more. The order states that agencies are not required to use PLAs. Regulations implementing the EO went into effect in May 2010.

A PLA generally specifies the wages and fringe benefits to be paid on a project, and it usually includes procedures for resolving labor disputes. PLAs generally include a provision that unions agree not to strike and contractors agree not to lock out workers. A PLA may require contractors to hire workers through a union hiring hall. If not, it may require employees to become union members after being hired. A PLA applies to all contractors and subcontractors on a project.

Opponents and proponents of PLAs disagree on the economic effects of PLAs. Supporters argue that the agreements provide uniform wages, benefits, overtime pay, hours, working conditions, and work rules for work on major construction projects. They maintain that PLAs provide contractors with a reliable and uninterrupted supply of workers at predictable costs for wages and benefits, and they argue that a PLA makes it easier to manage a large project, which ensures that it will be completed on time and on budget. Supporters also say that PLAs help train workers and improve worker safety.

Opponents argue that PLAs have several disadvantages. They argue that PLAs increase construction costs. Because a PLA sets standard labor costs and work rules, nonunion contractors cannot win bids based on lower costs. Moreover, nonunion contractors may not bid on projects that are covered by a collective bargaining agreement, resulting in fewer bids and higher costs. If a PLA requires contractors to hire workers through a union hiring hall, contractors may not be able to use their own workers. A nonunion contractor's workers may have to join a union and pay union dues. If a contractor has to pay into a union pension plan, employees may not be on the project long enough to vest in the plan. Opponents of PLAs also argue that nonunion contractors can operate more efficient worker training programs and that evidence does not indicate that nonunion construction projects are less safe than union projects.

Much of the research on the effect of PLAs on construction costs is inconclusive. In part, it can be difficult to find and compare similar projects where some use a PLA and others do not. If similar projects cannot be found, it can be difficult to control for factors that affect the costs and quality of construction. Studies of the effects of PLAs may not include variables that account for the quality of the work performed or whether the projects were finished on time.

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The National Labor Relations Act of 1935 (NLRA) gives most private sector workers the right to join or form a labor union and to bargain collectively over wages, hours, and working conditions.¹ The act allows workers in the construction industry to enter into a collective bargaining agreement (CBA) before a project begins. A project labor agreement (PLA) is a collective bargaining agreement that applies to a specific construction project and lasts only for the duration of the project.

In February 2009, President Barack Obama signed Executive Order 13502, which encourages federal agencies "to consider requiring" the use of PLAs on large-scale construction projects. Regulations implementing the Executive Order (EO) went into effect in May 2010.

This report begins with a description of PLAs. It then describes President Obama's EO and summarizes regulations to implement it. The report then examines arguments for and against the use of PLAs and reviews research on the economic effects of the agreements.

Project Labor Agreements

Most collective bargaining agreements are between an employer and a labor union and usually last for a specific period of time (e.g., for three years or five years). The NLRA allows employers and unions in the construction industry to enter into pre-hire agreements, which are CBAs between employers and unions that are reached before workers are hired for a project. Under one type of pre-hire agreement, one or more unions negotiate a contract with one or more building contractors. The agreement applies to projects before they arise and lasts for a specific period of time. A project labor agreement is another type of pre-hire agreement. A PLA applies to a specific construction project and lasts only for the duration of the project. All contractors and subcontractors on the project are bound by the agreement.²

A PLA generally specifies the wages and fringe benefits to be paid on a project. A PLA may require contractors to hire workers through a union hiring hall.³ If not, it may require employees

¹ The NLRA is also known as the Wagner Act, after Senator Robert Wagner of New York who sponsored the bill in the Senate. Representative William Connery of Massachusetts sponsored the bill in the House of Representatives. The Railway Labor Act covers labor-management relations in the airline and railroad industries. The Federal Service Labor-Management Relations Statute governs labor-management relations for most federal workers. For more information on the NLRA, see CRS Report RL32930, *Labor Union Certification Procedures: Use of Secret Ballots and Card Checks*, by Gerald Mayer.

² Section 8(f) of the National Labor Relations Act (NLRA) allows employers and unions in the construction industry to enter into pre-hire agreements. Section 8(e) of the act allows agreements that limit work on a project to contractors who agree to the terms of a PLA.

This section of the report is based on CRS Report 98-965, *Project Labor Agreements in Federal Construction Contracts: An Overview and Analysis of Issues*, by Gail McCallion; CRS General Distribution Memorandum, *Project Labor Agreements Under Federal and New York Law*, by Vince Treacy (a copy of this memorandum is available from the author of this report); John Lund and Joe Oswald, "Public Project Labor Agreements: Lessons Learned, New Directions," *Labor Studies Journal*, vol. 26, Fall 2001, pp. 1-2; and John T. Dunlop, *Project Labor Agreements*, Joint Center for Housing Studies, Harvard University, W02-7, September 2002, pp. 14-15. (Hereafter cited as Dunlop, *Project Labor Agreements*.)

Under union hiring hall procedures, a union refers members to jobs. Generally, members who have been out of work the longest are referred first. A PLA that requires contractors to hire through union hiring halls may allow nonunion contractors to hire a certain percentage of "core" employees outside of the union hall referral procedures. Fred B. Kotler, *Project Labor Agreements in New York State: In the Public Interest*, Cornell University, School of Industrial and Labor Relations, March 2009, p. 4.

to become union members after being hired. After they are hired, employees may petition the National Labor Relations Board (NLRB) to decertify the union or reject the requirement that they join the union.⁴

A PLA usually includes procedures for resolving labor disputes. For example, if there is a disagreement between management and the unions over the interpretation of the PLA, the dispute may go to mediation and then to arbitration. PLAs usually include a provision that unions agree not to strike and contractors agree not to lock out workers.

The Use of PLAs

PLAs have been used in the United States since at least the 1930s. According to a 1998 report by the Government Accountability Office (GAO), PLAs were used in the construction of the Grand Coulee Dam in Washington in 1938, the Shasta Dam in California in 1940, the Trans-Alaska Pipeline, Walt Disney World and the Kennedy Space Center in Florida, and the cleanup of Boston Harbor.⁵ PLAs were also used in the construction of nuclear power plants in Hanford, WA, and Oak Ridge, TN.⁶

According to the GAO report, the total number of PLAs is not known. The report states that there is no identifiable group in either the private or public sectors that keeps comprehensive data on the number of PLAs. Nevertheless, GAO's research concluded that most PLAs are in the private sector and that they have been used in all 50 states and the District of Columbia on both private and public projects.⁷

President Obama's Executive Order on PLAs

On February 6, 2009, President Obama signed Executive Order 13502, which encourages federal agencies "to consider requiring" the use of PLAs on large-scale construction projects. The EO defines large-scale projects as those where the total cost to the federal government is \$25 million or more. The order states that agencies are not required to use PLAs. It also states that agencies are not prevented from using PLAs on projects not covered by the order.

The EO states that agencies may require a PLA if it will

advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and

⁴ The NLRB administers and enforces the NLRA. The NLRB is an independent federal agency that consists of a five-member Board and a General Counsel. The General Counsel's office conducts secret ballot elections and investigates complaints of unfair labor practices. National Labor Relations Board, *Basic Guide to the National Labor Relations Act* (Washington, DC: U.S. Government Printing Office, 1997), p. 33, available at <http://www.nlr.gov>.

⁵ U.S. Government Accountability Office, *Project Labor Agreements: The Extent of Their Use and Related Information*, GGD-98-82, May 1998, pp. 4-5. (Hereafter cited as GAO, *Project Labor Agreements*.)

⁶ Dunlop, *Project Labor Agreements*, p. 2.

⁷ GAO, *Project Labor Agreements*, pp. 6, 10.

regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters.⁸

On July 10, 2009, Peter Orszag, Director of the Office of Management and Budget (OMB), issued a memorandum requesting agencies to submit quarterly reports identifying all contracts awarded for large-scale construction projects and whether or not a PLA was required on the project.⁹

On April 13, 2010, the Administration issued final regulations that implement President Obama's EO. The regulations went into effect on May 13, 2010, and they include general requirements for PLAs. APLA shall

- bind all contractors and subcontractors on a construction project to comply with the PLA;
- allow all contractors and subcontractors to compete for contracts and subcontracts whether or not they are otherwise a party to a collective bargaining agreement;
- contain guarantees against strikes, lockouts, and similar job disruptions;
- provide binding procedures for resolving labor disputes that may arise during the term of the PLA;
- provide other mechanisms for labor and management cooperation on matters of mutual interest and concern, such as productivity, quality of work, safety, and health; and
- include any additional requirements that an agency deems necessary.

The final rule encourages agencies to consider PLAs early in the acquisition process. The rule states that an agency may specify the terms and conditions of a PLA. In addition, the final rule identifies several factors that agencies may consider when deciding whether to use a PLA. These factors are:

- the construction project will require multiple contractors or subcontractors who employ workers in multiple crafts or trades;
- a shortage of skilled workers exists in the area of the construction project;

* President Barack Obama, "Use of Project Labor Agreements for Federal Construction Projects," *Federal Register*, vol. 74, February 11, 2009, pp. 6985-6987. President Obama's EO revoked EOs issued by President George W. Bush in February and April 2001. On February 17, 2001, President Bush signed Executive Order 13202. The order said that federal agencies could not "require or prohibit" construction contractors from entering into PLAs. The EO did not prevent contractors from voluntarily entering into PLAs; President George W. Bush, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," *Federal Register*, vol. 66, February 22, 2001, pp. 11225-11226. On April 6, 2001, the EO was amended to allow PLAs to continue if they were in effect on the date that EO 13202 was issued; President George W. Bush, "Amendment to Executive Order 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," *Federal Register*, vol. 66, April 11, 2001, pp. 18717-18718.

** Peter Orszag, Office of Management and Budget, *Memorandum for the Heads of Executive Departments and Agencies*, M-09-22, July 10, 2009, available at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-22.pdf.

- a project will last an extended period of time;
- PLAs have been used on comparable public or private projects in the area;
- a PLA will promote the agency's long-term program interests, such as training workers to meet the agency's future construction needs; and
- any other factors that an agency thinks are appropriate.¹⁰

Advantages and Disadvantages of PLAs

Proponents of PLAs argue that the agreements have several advantages, including the following:"

- A PLA provides uniform wages, benefits, overtime pay, hours, working conditions, and work rules for work on major construction projects.

A PLA provides contractors with a reliable and uninterrupted supply of workers at predictable costs for wages and benefits. PLAs prohibit strikes and lockouts. Because local unions are generally members of a national union, a union can recruit workers both locally and nationally.

A large project is easier to manage if there is a PLA. Instead of dealing with several unions that may have different wages and benefits and whose contracts may have different expiration dates, contractors must deal with a single collective bargaining agreement.

Because labor costs are predictable and because a PLA makes it easier to manage a large project, a PLA helps ensure that a project will be completed on time and on budget.

A PLA may help train workers by requiring contractors to participate in apprenticeship and training programs.

- A PLA can improve worker safety by requiring contractors and workers to comply with project safety rules.

Opponents argue that PLAs have several disadvantages:¹²

- PLAs can increase costs. Because a PLA sets standard labor costs and work rules, nonunion contractors cannot win bids based on lower costs. Nonunion

¹⁰ Department of Defense, General Services Administration, and the National Aeronautics and Space Administration, "Use of Project Labor Agreements for Federal Construction Projects," *Federal Register*, vol. 75, April 13, 2010, pp. 19168-19179.

¹¹ Dunlop, *Project Labor Agreements*, pp. 15-17. U.S. Senate, Committee on Health, Education, Labor, and Pensions, *Examining if Project Labor Agreements and Their Use of Public Funds are Really in the Best Interest of Taxpayers*, Hearing, 106th Cong., 2nd Sess., June 5, 2000 (Washington, DC: U.S. Government Printing Office, 2000), p. 46.

¹² Herbert R. Northrup and Linda E. Alario, "'Boston Harbor'- Type Project Labor Agreements in Construction: Natuie, Rationales, and Legal Challenges," *Journal of Labor Research*, vol. 16, Winter 1998, pp. 1, 9, 12-14, 17-19; Maurice Baskin, "The Case Against Union-Only Project Labor Agreements on Government Construction Projects," *Journal of Labor Research*, vol. 16, Winter 1998, p. 117.

contractors may choose not to bid on projects that are covered by a collective bargaining agreement. The result may be fewer bids and higher costs.

- If a PLA requires contractors to hire workers through a union hiring hall, contractors may not be able to use their own workers.
- If a contractor is able to use his own workers, the workers may have to join a union and pay union dues. If a contractor has to pay into a union pension plan, the employees may not be on the project long enough to vest in the plan.
- Nonunion contractors may operate more efficient worker training programs. Instead of apprenticeship programs of a fixed duration, nonunion contractors can train workers for specific tasks.
- Evidence does not indicate that nonunion construction projects are less safe than union projects.

The Economic Effects of PLAs

Opponents and proponents of PLAs disagree on the economic effects of PLAs. To some extent, projects that use PLAs may be different from projects that do not use them, which can make it difficult to isolate the effects of PLAs. For example, based on interviews it conducted, GAO observed that

Proponents and opponents of the use of PLAs said it would be difficult to compare contractor performance on federal projects with and without PLAs because it is highly unlikely that two such projects could be found that were sufficiently similar in cost, size, scope, and timing.¹³

Nevertheless, GAO summarized three studies on the effect of PLAs on project costs. The first study was conducted by the Associated Builders and Contractors. The study concluded that PLAs raised bids by 26% on two New York state projects. In the second study, the New York Thruway Authority hired a consultant to negotiate a PLA for a project to refurbish the Tappan Zee Bridge. The consultant concluded that the PLA reduced the cost of the project by \$6 million (or 4.6%). Instead of 19 local CBAs (each of which would have expired during the project), the PLA standardized the terms and conditions of the project. The third study involved construction at the Department of Energy's Lawrence Livermore National Laboratory in Livermore, CA. An official from the laboratory provided GAO with documents that indicated that the project contractor estimated that the PLA lowered the cost of the project by about 0.4%. Most of the estimated savings were due to lower costs for overtime, shift differentials, and holiday pay, as well as the greater use of apprentices instead of higher-paid journeymen.¹⁴

More recent studies have reached different conclusions about the economic impact of PLAs. The Beacon Hill Institute at Suffolk University in Boston has published a series of studies on the effects of PLAs. The studies conclude that PLAs raise the costs of construction. In a study of 62 school construction projects in the Boston area from 1995 to 2003, researchers at the institute concluded that PLAs raised the cost of construction by \$16.51 per square foot (in constant 2001

¹³ GAO, *Project Labor Agreements*, p. 12.

¹⁴ *Ibid.*, pp. 13-14.

dollars), or 12%. The study controlled for the size of construction (i.e., square feet) and whether the project was new construction or renovation.¹

The Beacon Hill Institute also published a study in 2004 of school construction projects in Connecticut. The study concluded that PLAs raised the cost of construction by \$30.00 per square foot (in constant 2002 dollars), or 18%. The estimate controlled for the size of the project, whether the project was new construction or renovation, the number of stories, and whether the project was an elementary school.¹⁶

On the other hand, a 2003 study of 92 new school construction projects in Massachusetts, Connecticut, and Rhode Island concluded that, after controlling for several characteristics of the projects, PLAs did not have a statistically significant effect on the costs of construction. The study concluded that, controlling only for the size of a project (i.e., square feet), construction costs on projects with a PLA were \$25.39 (or 15.7%) greater per square foot than on projects that did not have a PLA. But, the study found that projects that used PLAs were larger and more expensive than projects that did not have PLAs. After controlling for the size of a project as well as other project characteristics, the study concluded that the cost per square foot was \$13.42 (or 2.0%) higher on projects that used a PLA.¹⁷

Qualitative research has been conducted on other aspects of PLAs. For instance, a group of researchers interviewed approximately 40 people experienced with PLAs to identify advantages and disadvantages of the agreements. Results from such a small sample may not be representative of all PLAs. Nevertheless, the researchers concluded that "interviewees seemed most convinced that the greatest benefit of a PLA was in assuring timely completion of a project. Foremost, PLAs nearly guarantee a steady flow of qualified labor."¹⁵ One interviewee said, "Anything above five to eight million dollars we will go to a project labor agreement because we find it a more effective management tool.... Basically it's the labor pool, the supply of labor, [and] the quality of

¹⁵ The study included projects of \$5 million or more and excluded small and large projects (defined as projects of less than 40,000 square feet and projects of more than 400,000 square feet, respectively). The \$16.51 estimate is based on the actual cost of construction, as opposed to the bid cost, which is the initial price for a project reported by the successful bidder. The study concluded that PLAs raised the bid cost of 126 construction projects by \$ 18.83 per square foot (or 14%). The study found that the effect of PLAs is smaller on new school construction than on renovations; Paul Bachman, Darlene C. Chisholm, Jonathan Haughton, and David G. Tuerck, *Project Labor Agreements and the Cost of School Construction in Massachusetts*, Beacon Hill Institute, September 2003, pp. 8-11.

¹⁶ The study included 71 projects of more than \$1 million from 1996 to 2004; Paul Bachman, Jonathan Haughton, and David G. Tuerck, *Project Labor Agreements and the Cost of Public School Construction in Connecticut*, Beacon Hill Institute, November 2004, pp. 9-11, 14. The Beacon Hill Institute also published a study in 2006 of school construction projects in New York state. The study concluded that PLAs raised the bid cost of construction by \$26.98 per square foot (or 18%). The study included 117 projects of more than \$1 million from 1996 to 2005. The \$26.98 estimate controlled for size, number of stories, and whether the project was an elementary school; Paul Bachman and David G. Tuerck, *Project Labor Agreements and Public Construction Costs in New York State*, Beacon Hill Institute, April 2006, pp. 7-8, 10-11, 18.

¹⁷ Ten projects, nine of which were in Massachusetts, used PLAs. The study controlled for characteristics such as the type of school (e.g., elementary or vocational); site preparation; whether the project was located in Boston; whether the school included a cafeteria, auditorium, swimming pool, or science labs; the type of heating and cooling systems; and other characteristics; Dale Belman, Russell Ormiston, William Schriver, and Richard Kelso, *The Effect of Project Labor Agreements on the Cost of School Construction in New England*, School of Labor and Industrial Relations, Michigan State University, Working Paper Series 2005, pp. 7-8, 15-16, 34.

¹⁸ Dale Belman, Matthew M. Bodah, and Peter Philips, *Project Labor Agreements*, ELECTRI International, 2007, p. 27. (ELECTRI International is a nonprofit organization that, among other things, funds research on issues important to the electrical construction industry, ELECTRI International, *Facing the Future of Our Industry, Report to Stakeholders 2008*, Bethesda, MD, pp. 2, 18, 24.)

the workmanship." Interviewees were also critical of PLAs, however. The main criticism was that PLAs can increase the bargaining power of construction unions. According to the study, in areas where a large share of jobs are covered by PLAs, construction unions may make greater demands during negotiations over new union contracts. If one union is successful, other unions may make similar demands.¹⁹

In short, much of the research on the effect of PLAs on the costs of construction is inconclusive. In part, it can be difficult to find similar projects where some use a PLA and the others do not. Instead of comparing similar projects, economists use statistical models that attempt to control for differences in the characteristics of different projects. It can be difficult, however, to control for factors that may affect the costs and quality of construction.²⁰ In addition, quantitative analyses of the effects of PLAs often do not include variables that account for the quality of the work performed or whether the projects were finished on time.

"*ibid.*, pp. 27,31.

²⁰ Statistical models that attempt to control for differences in construction characteristics may use regression analysis, which is based on a number of assumptions. One of these assumptions is that the explanatory variables are independent (i.e., they are not highly correlated with each other). If any of the variables are highly correlated, the estimates may be biased (i.e., they are not the true values). The study by Belman et al. of 92 new school construction projects in Massachusetts, Connecticut, and Rhode Island has been criticized because some of the explanatory variables may be highly correlated. For example, the size of a project may be correlated to the presence of an auditorium or cafeteria. David G. Tuerck, Sarah Glassman, and Paul Bachman, *Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem*, Beacon Hill Institute, August 2009, p. 28.

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