

ZETLIN & DE CHIARA LLP

Build With Us

PROJECT **LABOR** AGREEMENTS

An Owner's Tool for Controlling Construction Costs



UNDERSTANDING PROJECT LABOR AGREEMENTS

WHAT IS A PROJECT LABOR AGREEMENT (PLA)?

A PLA is an agreement between an owner (or, as discussed below, an owner's constructor) and the various trades involved in a single construction project or across multiple projects. Instead of contending with separate agreements with the different trades that will provide labor and services on a project, the owner has the benefit of a single agreement governing all of the workplace rules for all of the trades on the entire project (or program of projects). In other words, as Professor Fred Kotler of Cornell University has noted, a PLA is a sort of "job site constitution."¹

On a typical construction project, an owner and its constructor will work with a multitude of trades (carpenters, iron workers, masons, etc.). Each of these trades is governed by its own collective bargaining agreements (CBAs), with its own set of work rules such as rates for overtime, shift time premiums,

working hours and the number of holidays observed. Perhaps more importantly, the respective CBAs will likely expire or come up for renegotiation at different points during construction of the project. All of these agreements with their differing work rules and expiration dates can and often do lead to uncertainty, confusion and even work stoppages, making it difficult for construction to proceed efficiently and on schedule. In short, productivity suffers.

A properly prepared PLA can avoid these disruptions by standardizing contract terms among various crafts for the duration of a project.² Specifically, through comprehensive negotiations with the representatives of all of the trades on a project, an owner is able to establish working rules for a project to suit its particular needs, maximizing efficiencies and savings. For example, a PLA may set wage rate and

fringe benefit payments, apprentice ratios, and uniform work schedules. A PLA should include an alternative dispute resolution procedure for any disagreements that may arise during the course of the project, including issues arising under workers' compensation. Additionally and perhaps most importantly, a PLA typically includes a commitment by all of the trades to uninterrupted production through "a no-strike / no lockout, no slowdown or disruption clause."³ In so doing,





HOW HAVE PLAS BEEN USED IN THE NEW YORK CITY AREA?

a PLA provides an owner with a level of consistency and comfort that, as discussed below, often translates into cost savings and increased productivity on a project.

The New York City area has a significant history with PLAs that encompasses public and private as well as large and small projects, crafted to meet the needs of changing times. One of the most well-known of these New York City area PLAs is the 2009 Economic Recovery Project Labor Agreement (“ERPLA”). The ERPLA was a template PLA that could be applied to multiple projects throughout New York City “designed to save construction jobs and ‘financially distressed’ private sector projects from the severe impact of the 2008–2009 economic downturn to New York City’s construction and real estate markets.”⁴ It is estimated that the ERPLA reduced the

cost of unionized construction across its projects by 16 to 20%.⁵ Subsequent market conditions gave rise to an outer borough PLA and a Manhattan residential recovery PLA tailored for private sector development. The Building Trades Employers’ Association of New York City includes some 40 projects within its roster of PLAs entered into between January 2013 and April 2017.⁶

On the public side, the New York State Thruway Authority has entered into a PLA for the Tappan Zee Hudson River Crossing Project to replace the original Tappan Zee Bridge.⁷ The Thruway Authority, which entered into the PLA with 14 unions including 26 locals, estimated that the PLA would yield \$452 million in savings over the life of the \$5 billion project.⁸ These savings would be achieved through a combination of uniform work rules, alternative dispute resolution mechanisms and a “no-strike” provision.⁹



BROAD MARKET APPLICATIONS, REGARDLESS OF PROJECT SIZE

PLAs continue to play an important role on projects throughout the metropolitan New York area. Through the ERPLA, PLAs were applied to projects with values exceeding \$1 billion as well as to projects with a value of less than \$10 million.¹⁰ Such diversity has continued over the years. PLAs have been a hallmark of the multi-billion dollar One Vanderbilt project (the largest single-building private PLA as of mid-2017) and the ambitious Hudson Yards multi-project development, as well as

of the relatively modest Build-It-Back program to assist single-family homeowners recovering from the ravages of Hurricane Sandy.¹¹ Unquestionably, PLAs have consistently broad appeal in the New York City area.

The health care industry has long been an advocate of PLAs, which have been adopted and applied by many hospitals throughout the metropolitan area on a variety of projects, both large and small. For example, PLAs were incorporated into projects

for Mount Sinai Hospital valued at approximately \$262 million and for Hospital for Special Surgery valued at approximately \$35 million, as well as Memorial Sloan Kettering valued at approximately \$6.6 million.¹² As these examples help illustrate, owners on projects throughout the New York City region have turned to PLAs as a tool to help reduce costs on their project without sacrificing quality or control over the work.

DO PLAS REALLY SAVE MONEY?

Although PLAs are not suited for every project, under the right circumstances with the right preparation, PLAs help owners achieve greater cost savings than would likely otherwise have been obtained through traditional methods of contracting individually with each trade.

Research has confirmed that “PLAs achieve substantial, direct costs savings by standardizing contract terms among various area craft agreements.”¹³ For example, PLAs entered into by the City of New York in 2015 covering approximately \$8 billion in both new and renovated construction were estimated to save over \$347 million.¹⁴ Similarly, having reduced the labor costs on some \$5.4 billion in renovation and repair work by approximately \$221 million over the course of its 2004 - 2009

PLA, the New York City School Construction Authority (“SCA”) avidly pursued a successor PLA governing its \$11.7 billion capital plan for 2009 - 2014; given the necessity of second and third shift work on its projects to avoid disruption of school activities and the typically high rates of premium pay for such work, the PLA’s 5% limitation on shift differential premiums has been a particularly significant source of cost savings to the SCA.¹⁵ Thus, under the right circumstances, it is well established that PLAs can be an effective tool in reducing costs.

In addition to offering both direct and indirect savings on labor costs, PLAs have other benefits that are more difficult to quantify but may prove more important to owners and contractors. Chief among these

benefits is the “no-strike / no lockout, no slowdown or disruption clause.” As a leading commentator has noted, “PLAs provide job stability and promote productivity by banning strikes and by including a common contract expiration date that replaces the expiration dates of the various craft agreements.”¹⁶ In fact, “this is arguably the most significant advantage of a uniform agreement - the critical factor for reducing the risk of costly delays.”¹⁷ By avoiding these delays, an owner can likely reap savings through increased productivity while at the same time averting significant and potentially costly risks such as litigation.



FINDING THE PROMISED SAVINGS

While direct savings by means of reduced wage / fringe benefit rates and work rule changes can be obtained with certain key trades such as ironworkers and electricians, many benefits of a PLA are more indirect yet still tangible. In addition to the reduced shift differentials noted above, these include:

- 40-hour straight time work weeks for all trades - this yields savings of 5 hours per week on premium time pay for trades whose CBAs mandate 35-hour weeks.
- Work week of four 10-hour days - besides reducing start/stop inefficiency, this provides a savings because the ninth and tenth hours are worked at straight time rather than overtime.
- Flexible start times - this allows efficient scheduling of work during daylight hours without incurring overtime rates.
- Temporary services provided only upon contractor's request - this enables the contractor to minimize the cost of temporary services otherwise mandated by CBAs.
- Higher ratios of apprentices to journeypersons than typically allowed under CBAs - this advantage, as well as creativity in categorization of laborers, promotes reduction of labor cost.
- Standardized holiday schedule - this eliminates overtime by service trades required to be present to support the work of other trades whose holiday schedules differ from theirs.
- Saturday straight time make-up-day - this allows work that could not be performed on a weekday, for weather or other reasons, to be made up on a Saturday without the necessity to pay overtime rates.
- Artisan provisions - these enable owners to employ non-union personnel for installation of highly specialized technical or aesthetic components of a project.

Constant vigilance - including monitoring of the trade subcontractors employing the relevant labor force - is necessary if owners are to receive the full benefit of their PLA bargain. In the end, whether a PLA will likely result in direct cost savings or other indirect benefits for the owner is something that needs to be evaluated on a project by project basis. What is clear, however, is that where the project conditions are right and the PLA properly drafted, a PLA has the potential to yield significant cost advantages while providing invaluable labor stability.

PLAs MAY SERVE TO CONTROL INSURANCE COSTS



Given the burgeoning costs of insuring construction projects and the ever-present specter of high jury verdicts for injured workers, owners constantly seek ways to limit claims and attendant litigation. One such approach, which has been endorsed by the insurance industry, is through the implementation of alternative dispute resolution (“ADR”) programs to address and resolve workers’ compensation claims earlier and more efficiently through mediation. Some owners have succeeded in including in their PLAs a provision permitting such a program to be established for the project; however, participation in such a program will likely be optional by trade.

HOW INVOLVED SHOULD AN OWNER BE IN A PLA NEGOTIATION?



While owners will want to be involved in the negotiation of the terms and conditions of a PLA, it is advisable that the agreement itself be entered into formally between the owner’s construction manager/general contractor and the union parties. There is no need for the owner actually to be a signatory; rather, the owner will be a third-party beneficiary of the PLA.

Correspondingly, the construction management or general contracting agreement should provide for that entity to execute the PLA, to remain responsible for implementation of the PLA, and to require adherence to the PLA on the part of its subcontractors. These contractual obligations remove the owner from day-to-day concern with - and responsibility for - the operation of the PLA throughout the duration of the project.

CONCLUSION

PLAs are a creative tool for owners to consider as they examine the labor requirements of a project. Given their long history of successful use on public and private projects of varying sizes in the New York City area, on the right project, PLAs can provide owners with significant savings in labor costs, as well as indirect schedule savings. Additionally, and not insignificantly, through the use of no-strike provisions, PLAs can provide owners with a measure of labor stability resulting in greater efficiency and productivity on their projects.

So, as you get ready to build, consider the potential of a PLA for your project. It is a tool with formidable power to reduce and control costs when its provisions are appropriately structured and applied.



Notes

- 1 Kotler, F. (2011). Project Labor Agreements in New York State II: In the Public Interest and Of Proven Value. Ithaca, NY: Cornell University, School of Industrial and Labor Relations, p. 2 [hereinafter, "Kotler (2011)"].
- 2 Id.
- 3 Kotler, F. (2009). Project Labor Agreements in New York State: In the Public Interest. Ithaca, NY: Cornell University, School of Industrial and Labor Relations – Extension Division, Construction Industry Program, p.
- 4 Kotler (2011), pp. 49–50.
- 5 Id.
- 6 Building Trades Employers' Association of New York City, Project Labor Agreements, <http://www.bteany.com/pages/labor-relations/project-labor-agreements.html> (visited 4/10/17).
- 7 Campbell, Jon, Formally, Thruway Authority Approves Tappan Zee Labor Agreement, Politics on the Hudson, July 17, 2012, http://polhudson.lohudblogs.com/2012/07/17/formally-thruway-authority-approves-tappan-zee-labor-agreement/#Scene_1.
- 8 Id.
- 9 The "New" New York Bridge, Project Support Materials for TIFIA Financing Projects, <http://www.newnybridge.com/documents/study-documents/tifia-presentation-sep5.pdf>
- 10 Kotler (2011), Appendix B.
- 11 ALIGN, Sandy Build It Back: Workers Rebuilding Their Own Communities (2016), p. 4.
- 12 Kotler (2011), Appendix B.
- 13 Id., p. 2.
- 14 New York City Mayor's Office of Contract Services, Project Labor Agreements, <http://www1.nyc.gov/site/mocs/contract/project-labor-agreements.page> (visited 4/10/17).
- 15 Kotler (2011), p. 49.
- 16 Id., p. 2.
- 17 Id.

ABOUT ZETLIN & DE CHIARA LLP

Zetlin & De Chiara LLP provides sophisticated, innovative legal representation and business counsel to real estate owners, commercial and residential developers, architects and engineers on all aspects of complex construction projects and disputes. The firm's attorneys bring a rare blend of expertise to their work including in-house construction counsel experience, LEED accreditation, and education in architecture and engineering. Zetlin & De Chiara LLP has been involved with many iconic projects in the education, healthcare, hospitality,

infrastructure, transportation, cultural, environmental and energy sectors.

Zetlin & De Chiara LLP provides counsel throughout the construction planning, design and building process, from drafting and negotiating contracts to developing risk management strategies. Well-known for its courtroom prowess, the firm also represents clients in mediation and alternative dispute resolution. Zetlin & De Chiara LLP represents domestic and international clients in high-stakes, bet-the-company matters. Many of the lawsuits in which the firm

has been involved have concerned projects outside of the United States.

Zetlin & De Chiara LLP also assists clients with business formation, licensing and corporate issues. Clients also seek the firm's guidance on the benefits and challenges of new technologies, innovative methodologies, alternative construction delivery methods and industry trends. Zetlin & De Chiara LLP serves as general counsel to numerous design, construction and real estate professional associations.

ABOUT OUR PROJECT LABOR AGREEMENT PRACTICE

Project Labor Agreements have a long history of successful use across the country and particularly in and around New York City on public and private projects of varying size. Based upon this history, it is clear that on the right projects, and where properly drafted, PLAs can be an effective tool in helping to reduce

an owner's labor costs on a project and to minimize or even eliminate labor disruptions, enabling projects to proceed more efficiently without interruption.

Zetlin & De Chiara LLP has built a reputation as a leader in all construction-related matters,

including streamlining the construction contract process for owners through comprehensive PLAs. By keeping the owner's interests at the forefront of its PLA strategies, Zetlin & De Chiara LLP has played a fundamental role in many of New York's largest, most successful construction projects.

801 Second Avenue
New York, New York 10017
212.682.6800
www.zdlaw.com

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AUTHOR

James J. Terry, Esq.
Partner
Zetlin & De Chiara LLP