PROJECT-LABOR AGREEMENTS IN CONSTRUCTION INDUSTRY

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ABSTRACT: Project-labor agreements are often used in the construction industry to provide labor peace on construction sites as well as more flexible work-rule restrictions within each craft designation working on the project sites. Project agreements are usually negotiated on an individual-project basis for large-scale, long-duration construction projects with heavy ongoing manpower demands. Project agreements have proliferated in use in part due to the fragmented and multifaceted bargaining taking place in the local unions' jurisdictions. Project agreements have been designed to overcome the inefficient nature of local labor agreements and consequently improve the competitiveness of unionized construction for large-scale projects. Project agreements have been actively opposed by local union and nonunion contractor groups. Local contractor groups have challenged the legality of project agreements on the grounds of: (1) Alleged violations of the federal antitrust laws; and/or (2) alleged violations of the federal labor laws. This paper provides useful research information on project agreements and highlights important legal considerations in the negotiation of project agreements.

INTRODUCTION

Project labor agreements are labor-management agreements, which are utilized for large-scale, long-duration construction projects with heavy ongoing, skilled manpower demands. A project agreement is negotiated on an individual-project basis where the owner and each of the participating contractors and unions on the project become signatory to a sole, all-encompassing project agreement with uniform contract provisions across each craft designation. Essentially, the project agreement takes precedence over each of the participating unions' existing local labor agreements, and thereby provides uniform contract terms that are more favorable than those provided in the local labor agreements. A project agreement is primarily written to provide labor peace on the construction site for all trades, uninterrupted construction throughout the project duration, and more flexible work-rule restrictions within each craft designation working on the project.

This paper is designed to serve two purposes: first, to assemble relevant, available research on project-labor agreements in the construction industry; and second, to emphasize important legal considerations in the negotiation of project-labor agreements.

PROJECT-LABOR AGREEMENTS

A project agreement is a labor-management agreement between local unions and contractors covering work on a specific project to be accomplished in

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the local unions' jurisdictions. Traditionally, where language in the project agreement materially differs from that of local agreements or national agreements, the project agreement usually takes precedence (Therrell 1979). A project agreement is usually negotiated with all of the unions that will be involved on the project, sometimes with the assistance of representatives from the international unions, and is binding only for the duration of the project (Bourdon and Levitt 1980).

Project agreements have had a background and development all their own. For all practical purposes, project agreements are designed to provide stability and predictability for massive, long-duration construction projects involving numerous labor organizations and contractors. The likely characteristics of a massive, long-duration construction project performed under a project agreement, include the inherent complexity of the work, the large variety of building trade unions required to perform the work, and the extended duration of the project often expressed in years. In all likelihood, such a project undertaken with only local labor contracts would not be completed in the time frame that could be achieved under a project agreement. In a number of cases, project agreements accede to local labor agreements and often guarantee to pay retroactive wage increases back to the date of any locally negotiated changes in the applicable local labor contracts (Nolan and O'Brien 1981).

Project agreements can offer excellent benefits to management. First, the project agreement provides some stability in the wage structure and conditions of employment for the entire construction period. This situation alone gives the owner of the project, as well as the contractors working on the project, the opportunity to estimate labor costs more accurately than if they had to renegotiate with each union at the expiration of each local union's labor contract. By having all unions agree to wage rates and other conditions of employment at the beginning of the construction of the project, the owner and signatory contractors are thereby able to more accurately predict construction labor costs ("Howell" 1983).

Second, the project agreement provides management with a contractual promise by the unions not to engage in any strike or work stoppage during construction, in exchange for a contractual promise by management not to lock out any union members during the course of construction ("Howell" 1983). Speed (1978) estimates that work stoppage in relation to jurisdictional and contract disputes on union projects will add 2-1/2 to 5% to the direct labor costs of a project requiring 1,000,000 man-hours of construction. Uncertainty in total labor costs and in the completion schedule are intolerable to most owners and contractors, since the cost of delay of even a single-day's production can exceed thousands of dollars (Bourdon and Levitt 1980). Therefore, by having all of the unions in the locality agree not to strike the project under a project agreement, the owner and contractors are reasonably assured that the project will move in a more cost-effective and orderly manner to its scheduled completion ("Howell" 1983).

Project agreements can also offer significant benefits to unions. First, a project agreement can create an island of labor peace within the unions' jurisdictional territories, when local labor employers are prevented from exclusively locking out union members during the course of local collective bargaining. This is particularly true when the project agreement is written as an independent labor agreement with no binding legal ties to the expi-

ration of locally negotiated labor agreements. However, the union's shield from being exclusively locked out by local employers is effectively removed when the project agreement accedes to local labor agreements (Nolan and O'Brien 1981).

Second, unions benefit from the project agreement's assurance of employment, for large numbers of their members, over a considerable period of time, even though the wage rates on the project may or may not be lower than those under the local labor agreements. Also, project agreements can serve as a deterrent to projects going to nonunion contractors ("Howell" 1983).

Industries that have typically utilized project-labor agreements for the construction of their industrial projects include mass-transportation systems, chemical-processing plants, synthetic-fuels plants, and vast public-entertainment centers.

Project agreements have traditionally been associated with union-only construction. However, the complexity of the construction industry makes this distinction meaningless. In fact, union members may work for nonunion firms, and nonunion firms may become signatory to agreements with local or international unions. Also, nonunion or union subcontractors may work for union contractors or open-shop general contractors. Given this blurred realization, the best way to differentiate between union contractors and open-shop contractors, relative to project agreements, is to designate union contractors as those that are signatory to existing collective-bargaining agreements, and nonunion or open-shop contractors as those that are not (Bourdon and Levitt 1980).

For a construction project to be built under a project agreement, it is typically required that contractors who perform work on the project be signatory to project-labor agreement. In some cases, the project agreement requires that project contractors be signatory to the applicable local collective-bargaining agreements as well as signatory to the project agreement. In this case, a nonunion or open-shop contractor is virtually eliminated from performing work on the project, unless he is willing to forego his current nonunion labor posture. In other cases, the project agreement requires only that the representative contractors be signatory to the project agreement, regardless of current labor posture. As such, a nonunion contractor can perform work on the project so long as he is willing to be signatory to the project agreement. Outside of the scope of work under the project agreement, the contractor can continue to perform work on a nonunion basis.

Project agreements have proliferated in use for a variety of reasons. A primary reason has to be the competitive pressures applied by the growth of the open-shop sector. According to Bourdon and Levitt (1980), open-shop construction has grown in part due to the extreme fluctuation in the level of demand and composition of the construction-wage. Open shop has also grown due to the long-term increase in industrial and commercial building in geographic areas with less union representation. Bourdon and Levitt also note the continuing increase on the substitution of equipment and materials for on-site skilled labor. Open-shop contractors also experience lower total labor costs and greater management flexibility in many open-shop contractors as additional causes of open-shop growth.

There is no doubt that open-shop competition has been a major force in recent years for the consummation of a number of project agreements. Cer-

tainly, open-shop gains contribute to the unemployment problems of unionized workers. Obviously, when a large project is at stake and the issue is whether the project will be built exclusively by union or open-shop contractors, then a project agreement will temporarily solve immediate unemployment problems for the building-trade unions without prejudicing the possibilities of future gains in local collective bargaining (Foster and Northrup 1975). In addition, based upon the strength of open-shop competition, large industrial users that had traditionally built their major construction projects with union labor are often able to exert pressure on the local unions' representation to make a deal continuing to build their plants with union labor (Bourdon and Levitt 1980).

Also, industrial users have promoted project agreements with open-shop construction firms, thereby ensuring that the construction is union. According to Bourdon and Levitt (1980), large open-shop contractors have been able to negotiate project agreements with terms more favorable than local-labor agreements and occasionally with terms more favorable than those negotiated in project agreements by union construction firms. Obviously, the advantage to local unions is the opportunity to capture work for union members. The advantage to open-shop contractors is the lack of a permanent tie to union representation for their workers and the access to the unions' skilled labor pools.

Not all project agreements are the result of open-shop competition. Rather, special complex construction projects with the requirements of uninterrupted construction can spur the proliferation of project agreements. The Alaskan pipeline project is an excellent example. When the project agreement was signed, the Alaskan pipeline project represented the largest, most complicated project in U.S. construction history ("A Promise" 1973). The end result was a successful project offering vast employment opportunities for the then-slumping employment levels of unionized construction workers in Alaska.

Finally, owners, contractors, and unions have also contributed to the proliferation of project agreements because of the apparent inadequacies in local collective-bargaining agreements. Project agreements have proliferated in use, in part, due to the fragmented and multifaceted bargaining taking place within local unions' jurisdictions. Consequently, project agreements have been designed to overcome the inefficient nature of the local collective-bargaining process when union contractors are competing for massive construction projects ("Owners Urge" 1977).

In some cases, the local collective-bargaining process has resulted in local labor agreements that have virtually eliminated the cost and productivity advantages of skilled organized labor to perform the work on a typical construction project. According to Therrell (1979), collective bargaining at the local level is inefficient when contract negotiations lead to increasingly restrictive contract provisions as well as substantial wage hikes with less than offsetting increases in productivity. According to the Business Roundtable (*Constraints Imposed* 1982), the restrictive provisions in typical local collective-bargaining agreements that should be vigorously avoided in the negotiation of project agreements, include the following:

1. Restrictive overtime provisions.
2. High-time restrictive-pay provisions.
3. Crew-size restrictive provisions.

4. Show-up and reporting-pay restrictive provisions.
5. Subsistence and travel-pay restrictive provisions.
6. Time-paid not-worked restrictive provisions.
7. Restrictive shift provisions.
8. Hours-of-work restrictive provisions.
9. Off-site fabrication restrictive provisions.
10. Selection- and utilization-of-foremen restrictive provisions.
11. Hiring-halls restrictive provisions.

Project agreements can differ greatly depending on location of the project, size of the project, strength of open-shop competition across craft lines, and ultimately the amount of construction work available to all competitors. However, most project agreements will follow a typical index of subjects that are addressed in the body of the agreement. A typical project-agreement index is provided in Table 1 (Therrell 1979).

Project agreements do not normally affect wage rates, although in recent years special deals have been made. Usually project agreements reduce labor costs by banning jurisdictional-dispute interruptions; by including provisions for no strikes and the arbitration of contract disputes; by eliminating non-working stewards; by reducing or eliminating coffee-break periods; by permitting management to select its own supervisors; by reducing the overtime rate from double time to time and one-half; and by eliminating travel time, standby crews, etc. Most project agreements do not allow for one craft to do incidental work in another craft, because the agreement does not change basic-craft jurisdictional rules. However, in recent years, project agreements have widened the rights of management to utilize helpers and other sub-journeymen on projects, which optimizes the labor costs of performing incidental work within each craft designation (Northrup 1984).

Project labor agreements can be excellent management tools. The project agreement simplifies the project-management task because it eliminates the requirement to manage the project under numerous, differing local collective-bargaining agreements. Disputes and disagreements on a project will arise, however, the project agreement can effectively resolve issues through efficient grievance and arbitration machinery in the agreement. The end result can be a cost-effective project to an owner who has received a quality installation, as well as satisfied contractors who have been fairly rewarded for their efforts, and pacified unions who have maximized employment opportunities for their members (Therrell 1979).

Project agreements can significantly reduce the cost of unionized construction as compared to construction performed solely under local collective bargaining agreements. According to Therrell (1979) of PAPCO, Inc., a project agreement can result in a cost savings of roughly 10% of the project labor cost, or $6,000,000 for a project requiring an estimated 6,000,000 union man-hours at an average cost of $10 per man-hour. Recent project agreements contain both union-wage and work-rule concessions, which further support the competitive position of unionized construction (Northrup 1984).

Project agreements will likely reduce the economic differential posed by open-shop competition but some basic economic disadvantages will still exist. However, project agreements combined with excellent management, high productivity, and skilled manpower together provide unionized construction with the means to minimize this differential (Northrup 1984).

TABLE 1. Typical Project Labor Agreement Index

Index	
Article (1)	Subject (2)
I	Purpose
II	Effect of other agreements
III	Scope of Agreement
IV	General understandings
V	Owners rights
VI	Union representation
VII	Hiring procedures
VIII	Work rules and conditions
	Work day–work week
	Time and place of work
	Inclement weather
	Make-up time
	Reporting pay
	Checking in and out
	Travel and subsistence pay
	Premium pay
	Crane boom length premium
	Overtime
	Breaks
	Shifts
	Lunch period
	Holidays
	Paid holidays
	Payday
	Scaffolding
	Hourly employee assignments–crew size
	Supervision
IX	Wages and fringe benefits
X	Security of material, equipment, and tools
XI	Work stoppages and lockouts
XII	Grievance procedure
XIII	Work assignments and jurisdictional disputes
XIV	Project site preparation
XV	Safety, health, and sanitation
XVI	General savings clause
XVII	Several liability
XVIII	Duration
XIX	Entire understanding

Noteworthy Project Labor Agreements in Representative Industries

A noteworthy project agreement in the automobile industry was the project agreement negotiated to build the General Motors Corporation's $3.5-billion Saturn automobile-manufacturing complex in Spring Hill, Tennessee. The agreement took on an industry first by linking increases in wages and benefits to collective-bargaining averages as determined by the Construction La-

bor Research Council ("Saturn" 1985).

An interesting project agreement in the nuclear-power industry was the wide-ranging project agreement for plant units 1 and 2 to be operating, decommissioned or converted to other energy sources for the Three Mile Island nuclear-power plant. The project agreement contained the usual contract provisions in terms of prohibition of work stoppages such as strikes, picketing, or lockouts. However, because of the hazardous nature of the project, provisions were made in the project agreement to allow workers on-site to cross jurisdictional lines to perform tasks required by contractors to deal with an emergency ("Project" 1980).

One of the first project-labor agreements for the synfuel industry was an agreement reached between the Foster Wheeler Energy Corporation and the Memphis, Tennessee, Building and Construction Trades Council governing work on a $700-million medium–British thermal unit coal gasification plant. An interesting provision to the project agreement was a six-step process of settling jurisdictional disputes, where the final step required the dispute to be settled by an arbitrator according to procedures established by the American Arbitration Association ("Synfuels" 1980).

An interesting project agreement in the entertainment industry was the no-strike labor agreement negotiated for the $58,000,000 construction program for the 1980 Winter Olympic Games in Lake Placid, New York. Unlike most project agreements, this project agreement contained a subcontractor clause that was tailored to the results of open, merit-shop competitive bidding. Consequently, this project agreement was one of the first project agreements negotiated that did *not* require the project to be 100% union ("Labor" 1977).

Inherent Problems with Project Labor Agreements

According to Herbert Northrup of the Industrial Research Unit of the University of Pennsylvania, Wharton School of Business, project agreements do not reach key factors that allow open-shop contractors significant advantages. One key factor Northrup (1984) identifies, is the traditional union craft structure and the costs and problems associated with the requirement to adhere to union-jurisdictional lines in the deployment of labor. Northrup notes that project agreements typically provide union contractors with a helper category to promote considerable cost savings on work crews. An open-shop contractor can use one journeyman, one helper, and three laborers on a five-man crew, while the union contractor might be required to use two or three journeyman workers and the rest will be helpers. However, caution must be given to any quick conclusions regarding cost advantages based solely on average-wage differentials between union and nonunion construction workers. Rather, Bourdon and Levitt (1980) note that these wage differentials may be readily offset by productivity differences, which renders these comparisons of little use, when no relationship is drawn to total labor costs.

According to Foster and Northrup (1975), open-shop workers can readily cross craft lines without concern, while union workers are restrained by craft-jurisdictional restrictions. However, according to Bourdon and Levitt (1980), union-jurisdictional boundaries are neither inefficient nor as inflexible as they are often portrayed. Rather, large-scale work as governed by a project agreement can make them relatively efficient. Bourdon and Levitt note that for very large open-shop contractors, jurisdictional lines and on-site work or-

ganizations are very similar to union work, for large-scale projects. On large projects, these contractors often employ hundreds of workers in each craft, performing only craft-related tasks. Even though these contractors adhere to no jurisdictional lines in their deployment of labor and move workers across craft lines to perform other required tasks, they still schedule and organize the on-site work force using traditional craft classifications.

Project agreements may not provide needed relief in key areas that add to the union contractor's labor costs. In some cases, union contractors have lost contracts to open-shop competitors because one building trades union would not abide by provisions to a project agreement, and the union contractor's success in being awarded the contract was contingent on his ability to secure an appropriate project agreement from all the building trades unions required to perform the work (Northrup 1984).

According to Northrup (1984), project agreements can also be progressively whittled down. Job actions on the part of unions after construction commences can force union contractors to give back what they have gained in negotiating the project agreement before construction commences. Deals, protocols, and side letters made after construction commences serve to nullify key sections of the project agreement and consequently add significantly to contractors' labor costs. According to Northrup, it is often very difficult for contractors to compel the unions' collective adherence to a project agreement, when one union refuses to live up to the special-project arrangements. Bourdon and Levitt (1980) found in their research on union and open-shop construction that wage levels or increases that may be justified by the demand for a particular trade in a particular locality, tend to spread across all unions in the industry. Given this tendency, it is logical that critical deviations for one trade union from the contractual provisions of a project agreement will likely spur similar expectations from all the other trade unions on the project.

Another significant problem with project agreements is that contractors do not always make good use of what they have gained in negotiation of the project agreement. A case in point concerns the typical provision in project agreements allowing for subjourneymen or helpers within each craft designation. Management's contribution to this problem is apparent in situations where managers have learned their work under a system that did not use subjourneymen, and are often insufficiently innovative to take full advantage of efficient labor-deployment opportunities when they are presented. Unions have equally contributed to this problem by successfully resisting the use of subjourneymen even though the project agreement calls for their use (Northrup 1984).

Finally, according to Northrup (1984), jurisdictional disputes resulting in strikes do occur, because project agreements do not always fulfill their purpose. Northrup points out that "it takes just one ambitious business agent to pull his men off the job. Although these disputes can be quickly settled by machinery within the project agreement, time and money are lost which are critical to the contractor as well as the owner."

Problems Project Labor Agreements Cause to Local Labor Relations

While project agreements have served a construction purpose in many cases,

they have also produced controversy and animosity among owners and contractor associations and groups, because of their apparent impact on the local collective-bargaining system. According to the Business Roundtable (*Constraints Imposed* 1982), "There is little question that firm no-strike/no-lockout clauses in special (project) agreements weaken local contractor groups at the bargaining table." However, the Business Roundtable has also said that the issue can be readily overcome by special provisions in project agreements that permit projects under the agreements to be shut down during local bargaining strikes ("Owners Urge" 1977).

In 1975 the Department of Transportation (DOT) encouraged the use of project-labor agreements on Urban Mass Transportation Administration and Federal Aviation Administration projects ("DOT Will" 1976). In fact, a spokesman for the Urban Mass Transportation Administration (UMTA) said that while it was not a requirement that cities or transportation authorities receiving new UMTA construction grants have a no-strike project agreement, the practice was strongly encouraged ("Mass Transit" 1976).

In response to the DOT's position, James M. Sprouse, former Associated General Contractors associate vice-president, warned that the use of project agreements would "have the effect of stimulating inflation, of drastically undercutting the management side of collective bargaining in the construction industry and of excluding open shop construction firms from bidding on federally financed projects" ("Mass Transit" 1976).

Union contractor groups opposed the no-strike/no-lockout project agreements such as those the DOT had been encouraging, because they required contractors to agree to work through local bargaining strikes if they wanted to work on DOT jobs. Also, open-shope contractors feared that signing project-labor agreements encouraged by the DOT would force them to recognize unions as their employees' bargaining representative and bind them to union work rules and grievance procedures. UMTA has since privately circulated draft language designed to protect open-shop contractors who wanted to work on UMTA projects. Although, UMTA has since helped to resolve the nonunion contractors issues, the implications to the local collective-bargaining system have not been addressed, much to the distress of union contractor groups ("DOT Will" 1976).

According to the Construction Industry Management Board (CIMB), which has since been absorbed into the National Construction Employer Council (NCEC), project agreements provide a haven for strikers; weaken the bargaining position of contractors; reduce contractors' abilities to negotiate sound labor agreements; and effectively contribute to the long-term effects of construction-wage inflation ("Owner Project" 1976b).

In 1981, the NCEC, in conjunction with the Edison Electric Institute (EEI), working as a committee of owners and contractors, noted that large, long-term projects have an unsettling effect on the surrounding construction community, particularly when the projects are directed under a project agreement. These projects, according the committee, sharply escalate construction-wage rates that are then exported to other types of construction, making union construction less competitive overall. Therefore, to prevent the escalation of union construction-labor costs, the joint NCEC-EEI committee concluded that sound local collective-bargaining agreements are necessary to suit owners, national contractors, and local contractors alike in avoiding the unsettling effects caused by special-project agreements. Furthermore, the

committee recommended that owners of projects support local bargaining by shutting down during local bargaining strikes, which of course defeats the very purpose of a project agreement—that of the need for labor peace and uninterrupted construction on the project site ("Big Project" 1981).

E. P. Dennehy of American Electric Power of New York, New York (an owner) stated in *Engineering News Record* ("Project Agreement" 1976a) "Responsible projects agreements do not provide a haven for strikers, weaken contractor positions, or contribute to construction wage inflation. Responsible project agreements limit the job opportunities for striking employees, support the local bargaining position, and contain innovations in work rules and more reasonable economic terms than the contractors have been able to attain in collective bargaining. Let's all hope that the construction industry stops floundering around and asserts some leadership so that these agreements may not be necessary in this future."

In response to Dennehy's statement, A. B. Polley of Zupata Constructors, Inc., of Paramount, California (a contractor), replied in *Engineering News Record* ("Project Agreement" 1976b), "He [the owner] wants his project to continue while the local contractors shut down and fight unreasonable wage and condition demands of the local unions. A strike or lockout is an economic weapon with the party who hurts most finally capitulating. Most certainly, the pressure is taken off the union if a portion of its membership can continue to work during a dispute." Polley goes on to say, "We realize it hurts the owner to shut down a project after he has invested money in its partial construction. It also hurts the contractor who has insurance, supervision, taxes, and other fixed costs plus equipment payments to meet, and more than likely he comes closer to losing everything."

Legal Considerations Relative to Project Labor Agreements

Local union contractors, particularly those not signatory to the project agreement, condemn the use and proliferation of project agreements. These contractors argue that project agreements weaken their balance of power in local labor negotiations when union members are free to strike their local projects not under a project agreement, while continuing to draw full paychecks on a large project where strikes and lockouts are prohibited because of a project agreement.

Local nonunion contractors also oppose project agreements because they sometimes close out work to nonunion contractors and, in other instances, require nonunion contractors to become signatory to local labor agreements to perform work on the project. Consequently, local contractors both union and open shop view project agreements as disruptive to local labor relations and therefore have challenged the legality of project agreements on the grounds of: (1) Alleged violations of the federal antitrust laws; and/or (2) alleged violations of the federal labor laws.

Project Agreements Challenged for Alleged Antitrust Violations

Project agreements challenged on antitrust grounds appear to have weathered well under the judicial onslaught. Most antitrust challenges to project agreements focus on the agreement's potential to restrain trade and competition in the construction industry in alleged violation of the federal antitrust laws. Also, in conjunction to the antitrust claim is the common con-

tention by the challenging parties that the project agreement may violate sections 8(e) and 8(f) of the National Labor Relations Act (NLRA) as the governing federal labor law.

Section 8-(e) of the NLRA prohibits employers and unions from entering into express or implied "hot-cargo" agreements. Illegal hot-cargo agreements between a union and an employer occur when the employer (contractor) agrees not to offer or subcontract work to any employer that is not a signatory member of the particular union involved in the contract ("Adams Construction" 1984). However, the construction-industry proviso to section 8-(e) exempts these not-cargo agreements between unions and employers in the construction industry insofar as they relate to contracting or subcontracting of on-site work. One consequence of the construction-industry proviso to section 8(e) is that competition for on-site construction work may be legally restrained when the labor agreement provides that union-only contractors are eligible to bid for and perform work on the project site (Silbergeld 1980). Based on the section-8(e) construction-industry proviso exemption to illegal hot-cargo agreements, some legal challenges to project agreements test whether the signatory contractors and/or the owner are indeed "employers in the construction industry" and thereby exempted from the proscriptions to section 8(e).

Section 8(f) of the NLRA provides an employer in the construction industry with the legal means to make voluntary prehire collective-bargaining agreements with unions before the unions' majority status have been established under a section 9(c) or 9(e) representation petition under the NLRA. Construction-industry employers enter into prehire collective-bargaining agreements with unions before the employees are hired for a very practical reason. That reason is that contractors need to know what the wage rates and conditions of employment will be, before submitting their bids on a massive construction project ("Guidelines"). Based on the provisions of section 8(f) of the NLRA, which make prehire agreements legal for construction employers, other legal challenges to project agreements focus on whether the signatory contractors and/or the owner, as construction employers, have established valid collective-bargaining relationships with the signatory unions in the execution of the project agreement.

Given the framework of the common legal challenges to project agreements based on alleged violations of the federal antitrust laws and/or the federal labor laws, the following two antitrust case briefs offer clarification to the issues at hand.

Adams Construction Company v. Georgia Power Company

The precedent-setting case of a project agreement challenged under the antitrust laws was Adams Construction Company v. Georgia Power Company. The primary issue to the case was whether Georgia Power as the project owner entered into a conspiracy to exclude Adams as a nonunion contractor from participation in the construction of the Alvin W. Vogtle Nuclear Power Project in Burke County, Georgia, in violation of the antitrust laws ("Adams Construction" 1987).

During the course of construction work, Georgia Power had decided to emply only union contractors on the project. It was undisputed in the case that Adams was excluded from work on the project because Adams was a nonunion contractor. The crux of the case rested on whether there existed a

collective-bargaining relationship between Georgia Power and the Augusta Building Trades Council under execution of the project agreement. If a collective-bargaining relationship could be established then Georgia Power could claim an exemption to the federal antitrust laws by means of the construction-industry proviso to section 8(e) of the NLRA authorizing hot-cargo agreements between unions and employers in the construction industry, insofar as they relate to contracting or subcontracting of on-site work.

In effect, a valid collective-bargaining relationship under the construction-industry proviso to section 8(e) would allow Georgia Power to exclude Adams Construction simply because Adams was a nonunion contractor. A collective-bargaining relationship can be established through a valid pre-hire agreement executed in accordance with section 8(f) of the NLRA. Relative to Georgia Power's restrictive agreement to award work only to signatory union contractors to the project agreement, the court determined in examining legislative history that restrictive subcontracting agreements sought in the context of section 8(f) prehire agreements do not violate section 8(e) of the NLRA ("Donald Schriver" 1980).

Upon examining the section 8(f) issue the court found that section 8(f) applied to employers "engaged primarily in the building and construction industry," but yet had also been applied to employers whose general business was not in the construction industry but who were "engaged in construction work on a specific project" ("Construction Building" 1980). In applying this rationale to the Georgia Power case, the court found that although a major portion of Georgia Power's business involved the production and sale of electricity, Georgia Power was entitled to the protection of section 8(f) in establishing a collective-bargaining relationship because Georgia Power was sufficiently engaged in construction work on the project site ("Adams Construction" 1984).

The court further determined that Georgia Power and the unions should not be penalized because Georgia Power had acted as its own general contractor instead of hiring an outside contractor, which undoubtedly would meet the requirements of section 8(f). According to the court, to preclude Georgia Power from the protection of section 8(f) in terms of the prehire agreement would necessitate disqualification of general contractors in the construction industry that subcontract the entire project and only manage and coordinate the work, as did Georgia Power in the case ("Adams Construction" 1984).

Larry V. Muko v. Southwestern Pennsylvania Building and Construction Trades Councils et al.

Another interesting case that related to project agreements, but did not involve a project agreement, concerned *Muko v. Trades Councils*. Muko was a nonunion general contractor who built restaurant buildings for Long John Silver's Inc., as a corporation operating fast-food restaurants. After the completion of the first restaurant, two local-building and construction-trades councils distributed handbills to customers asking them to refuse to patronize Long John Silver's, alleging that the restaurant corporation used contractors (e.g., Muko) paying less than the prevailing wages for construction work in the area ("Larry v. Muko" 1979).

Long John Silver's was concerned that picketing at the site of a second restaurant, under which Muko had begun construction, would follow from the leaflet activity at the first restaurant. Consequently, Silver's and the local

building-trades councils signed an agreement that served to eliminate Muko as a nonunion contractor from consideration as a general contractor for the construction of 12 additional restaurants planned to be built for Silver's. Muko subsequently brought suit against both Silver's and the trade councils, alleging violations of the federal antitrust laws ("Larry v. Muko" 1979).

The Third Circuit Court of Appeals held upon remand to the trial court that Muko's antitrust complaint was sufficient to set forth a case of action antitrust claim for submittal to the jury. The Third Circuit Court noted: (1) The agreement between Silver's and the trade councils served to eliminate Muko as a competitor for the work; (2) a jury could find that the agreement increased the cost of construction by $250,000; and (3) the agreement had the potential for reducing competition because it excluded nonunion contractors without regard to wages or working conditions ("Larry v. Muko" 1979).

The court held that the market reduction imposed by the agreement between Silver's and the trade councils was outside of a collective-bargaining relationship, and produced anticompetitive effects that did not follow naturally from elimination of competition over wages and working conditions. Also, the court noted that the agreement's lack of a common situs limitation or collective-bargaining relationship made the construction-industry proviso to section 8(e) of the NLRA unavailable for exemption to the proscriptions of the federal antitrust laws ("Larry v. Muko" 1979).

Upon remand, the trial court instructed the jury to determine the reasonableness of the restraint imposed by the agreement in the Muko case, by the rule-of-reason analysis. The jury subsequently found that the agreement was not an unreasonable restraint of trade.

Based on the facts of the Muko case, it is difficult to predict the outcome of labor cases if boycotts of the general nature involved here are subject to antitrust analysis on a rule-of-reason basis rather than on a per se basis. The agreement between Silver's and the trade councils did exhibit much of the workings of a group boycott, which is illegal on a per se basis. However, the case was decided on a rule-of-reason basis. Subsequently, it will be difficult to predict whether a project agreement that requires union-only contractors will be found a reasonable or an unreasonable restraint of trade by a jury. The saving grace to an antitrust question lies in the fact that project agreements can be exempted from antitrust proscriptions when the agreements are negotiated in the context of collective-bargaining relationships.

In conclusion, these two cases illustrate that deliberation and care should be taken when drafting project agreements, so as to ensure the proper collective-bargaining relationships are established between owners, unions, and contractors in avoiding successful antitrust challenges (Nolan and O'Brien 1981).

Project Agreements Challenged for Alleged Labor Law Violations

Antitrust suits as in the Adams Construction Co. v. Georgia Power Company case are costly and time-consuming for the parties involved. It is doubtful that most contractors who are allegedly damaged by project agreements can undertake the costly gamble of an antitrust suit, based on the decision arrived at in the *Georgia Power* case. Therefore, parties in opposition to project agreements sometimes look to alleged violations of federal labor law, as processed through the National Labor Relations Board (NLRB), as a cost

effective means to oppose the proliferation and use of project agreements.

Probably the most common labor-law challenge presented against parties to a project agreement resides in the issue of alleged illegal secondary activity beyond that afforded by the construction-industry proviso to section 8(e) of the NLRA. The issue basically concerns whether owners are engaged in illegal secondary activity by negotiating project agreements, or whether they are entitled to the protection of the construction-industry proviso to section 8(e) because they are determined to be employers in the construction industry (Nolan and O'Brien 1981). Resolution to the issue appears to be very neatly addressed in the following three case discussions in conjunction with the precedence of the recent *Georgia Power* decision.

Construction Employers Labor Relations Association and the Miller Brewing Company

This case concerned a project agreement negotiated to cover work on a multimillion-dollar expansion of a brewery project in Fulton, New York, for the Miller Brewing Company of Milwaukee, Wisconsin. The Construction Employers Labor Relations Association (CELRA), a multiemployer bargaining unit, maintained that Miller Brewing Company was "the moving force in the creation of the project agreement." CELRA contended that the project agreement violated federal labor law because Miller was not an employer in the construction industry entitled to the protection of the section 8(e) construction-industry proviso ("Owner Project" 1976a).

In May 1986, CELRA filed a section 8(e) unfair labor-practice charge against Miller with the NLRB. The acting regional director of the NLRB in Buffalo, New York, refused to issue a complaint. Consequently, CELRA appealed to the regional director's refusal to issue a complaint to the general counsel of the NLRB.

The basis of CELRA's appeal was that the entire project agreement had a secondary boycott nature because it imposed upon someone the requirement that he shall cease doing business with someone else under certain conditions. Also according to CELRA, the no-strike/no-lockout clause of the project agreement restricted CELRA members who were signatory to the project agreement from supporting CELRA in local bargaining strikes. This, claimed CELRA, "delivered to the local unions, by way of the secondary employer Miller, a primary objective of weakening the multiemployer bargaining association ("Owner Project" 1976a).

CELRA asserted that Miller was not an employer in the construction industry but rather only brewed beer, which would exclude Miller's employees from coverage of the project agreement because Miller performed no construction work. Even if Miller could be called an employer in the construction industry, CELRA argued that Miller was still "a stranger and had no collective bargaining relationship with the unions," putting the project agreement beyond section 8(e) protection. CELRA closed out its appeal by arguing that an owner should not be allowed, by retaining a construction manager or reserving the right to veto a general contractor's choice of subcontractors, to assume the superficial trappings of an employer in the construction industry ("Owner Project" 1976a).

The NLRB general counsel refused to issue a section 8(e) complaint against Miller as the project owner, because Miller did possess a sufficient degree of control over the labor relations of construction employees on the project

so as to constitute an employer in the construction industry (Nolan and O'Brien 1981).

Associated Builders and Contractors and the General Motors Corporation

Another case where a project agreement was challenged on the basis of an alleged section 8(e) violation of federal labor law was the project agreement negotiated for the construction of the General Motors Corporation $3.5-billion Saturn automobile-manufacturing complex in Spring Hill, Tennessee. The project agreement was negotiated by Morrison-Knudsen Construction Co. as the construction manager, the AFL-CIO's Building and Construction Trades Department, and the Teamster's Union. The project agreement almost guaranteed that the project would be built by union contractors because the agreement provided, in pertinent part, that "all execution contractors of whatever tier shall sign, accept and be bound by the terms of the project agreement." Also, the project agreement required participating contractors to agree "to recognize the union(s) as the sole and exclusive bargaining representative for all craft employees on the project" and to use the unions' hiring halls for necessary jobsite employees ("Saturn Project" 1985).

The Associated Builders and Contractors (ABC), as a nonunion-contractors trade association, filed section 8(e) unfair labor-practice charges with Gerald P. Fleischut, regional director of the NLRB. The basis of the charges filed with Fleischut claimed that the project agreement caused Morrison-Knudsen as construction manager, to refrain from doing business with any construction employers that were not signatory to collective-bargaining agreements, in alleged violation of section 8(e) of the NLRA ("Unfair Labor" 1985).

NLRB direction Fleischut refused to issue a complaint based on the charges filed against the parties to the project agreement. Fleischut determined that Morrison-Knudsen as construction manager for the Saturn project "was clearly an employer in the construction industry" within the meaning of the NLRA. Fleischut found that the project agreement was valid and legal under sections 8(e) and 8(f) of the NLRA, and that further proceedings of the unfair labor practice charges "were not warranted ("NLRB Regional" 1986)."

In determining that the project agreement was a valid prehire agreement under section 8(f) of the NLRA, Fleischut noted that Morrison-Knudsen, as Saturn's construction manager, had hired several carpenters for the project and also had planned to perform a major portion of the excavation work on the site rather than contracting the work out. Additionally, according to Fleischut, "Board law makes it clear that if an employer's overall operations include a substantial amount of revenue from construction work, then the employer is an 'employer engaged primarily in the building and construction industry,' and is therefore qualified to enter into a section 8(f) [prehire] agreement." Fleischut noted that not only was Morrison-Knudsen a nationally recognized construction firm, but also that Morrison-Knudsen was actively involved in the construction process on the Saturn project site ("NLRB Regional" 1986).

The regional director also rejected ABC's claim that the project agreement was not arrived at in the context of a collective bargaining relationship because the construction industry proviso to section 8(e) authorized "the negotiation of union signatory clauses by a union and a construction industry

employer in the context of a collective bargaining relationship." Fleischut determined that Morrison-Knudsen's intention to hire construction workers and to allow representation served to satisfy the requirement of a collective bargaining relationship under section 8(e) ("NLRB Regional" 1986).

In view of the fact that the regional director of the NLRB had refused to issue a complaint based on the ABC's unfair labor-practice charges, the ABC then appealed the case to the general counsel of the NLRB. Upon reviewing written and oral arguments, the general counsel upheld the regional director's refusal to issue a complaint.

In conclusion the *Miller Brewing* decision, the Saturn Corporation decision and the *Georgia Power* decision, when read together suggest that owners are equally entitled to the protection of the construction-industry proviso to section 8(e) as are contractors and unions. Owners, contractors, and unions do not, in a general sense, engage in unlawful secondary activity by entering into project agreements.

Baltimore Chapter of the Associated Builders and Contractors and the Maryland Mass Transit Administration

On a final note relative to the applicability of the section 8(e) construction-industry proviso to owners under project agreements, the NLRB recently held that a state government entity as the project owner was not subject to the proscriptions of section 8(e) of the NLRA. The case involved unfair labor-practice charges filed by the Baltimore Chapter of the Associated Builders and Contractors (ABC) against the Maryland Mass Transit Administration (MMTA) and the Baltimore Building and Construction Trades Council (BCTC), which were the parties to a no-strike project agreement covering a $721,000,000 Baltimore mass-transit project ("No-strike" 1976).

The charges filed with the NLRB accused the agency and the council of violating section 8(e) of the NLRA. The charges centered on the project agreement's requirement that all contractors receiving subway construction contracts on the project agree to be bound by the terms of the agreement and agree that their subcontractors would also be so bound ("NLRB Advice" 1978).

Although the Maryland Mass Transit Administration employed neither construction employees nor supervisory personnel on the construction , the NLRB ruled that a city transit authority performing a traditional government function was not an employer under the NLRA, so neither it nor the union it had contracted with could have been guilty of entering an unlawful hot-cargo agreement prohibited by section 8(e) of the NLRA ("NLRB Advice" 1978).

In conclusion, it appears that public as well as private owners are entitled to protection from section 8(e) violations in the negotiation and execution of project agreements, and do not engage in unlawful secondary activity by entering into project agreements.

Summary and Conclusion

Project agreements have become popular for the construction processes of differing industries because of the ability to simplify the project-management task and the opportunity to reduce the cost of unionized construction over that performed under local labor agreements. Project-labor agreements will

likely reduce the economic differential posed by open-shop competition, yet some basic economic disadvantages still exist.

Although project agreements have been successful in a number of applications, there is no question that project agreements are disruptive to the local labor system. Nonunion and union contractors have opposed project agreements through legal challenges based on: (1) Alleged violations of the federal antitrust laws; and (2) alleged violations of the federal labor laws. Recent case history suggests that carefully-drawn project agreements with the proper collective-bargaining relationships will readily survive legal attacks concerning alleged federal antitrust and/or federal labor-law violations. In addition, a recent litigation has found that owners, contractors, and unions that negotiate and execute project agreements are entitled to the protection of the construction-industry proviso to section 8(e) of the NLRA.

Project agreements will most likely continue to be relied upon by union construction to compete with their open-shop counterparts for massive construction projects. Of course, this reliance will, in a large part, be influenced by the fragmented nature of collective bargaining at the local level. The expansion of open-shop construction and foreign competition in U.S. markets will likely impact the proliferation of project agreements. In conclusion, until local collective bargaining becomes uniform and consistent across all craft designations, project agreements will remain a viable alternative for unionized construction to compete for large-scale, long-duration construction projects.

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