

Another Hidden PLA Problem: Apprentice Fringe Benefit Contributions

By David Wolds

As one of his first acts of fealty to organized labor, President Obama issued an executive order encouraging federal agencies to require Project Labor Agreements (“PLA”) on federally funded construction projects, including projects funded by billions of dollars of federal stimulus money. In addition, a number of state public works projects, including projects funded through school district propositions, are going forward under PLAs.

A PLA is a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for workers on a specific construction project. PLAs incorporate the collective bargaining agreements of the unions that are signatory to the PLA. Non-union contractors who successfully bid and are awarded work under PLAs must agree to accept and be bound by the terms and conditions of the PLA and the incorporated labor agreements. Contractors working under PLAs also agree to pay contributions for employees working on the project to the established union employee benefit plans and to be bound by the terms of the union trust agreements governing these plans.

A recent federal court case involving the PLA adopted by the Los Angeles Unified School District illustrates potential liability which contractors face in these arrangements for apprentice benefit contribution payments.

The Facts of The Case

In 2008, several multi-employer trusts established by the International Brotherhood of Electrical Workers (“IBEW”) for the purpose of funding health and pension benefit plans brought a federal court action against a PLA electrical subcontractor (“Contractor”), alleging that the Contractor failed to pay sufficient contributions to the trusts for the hours worked by apprentices on PLA projects. The trustees claimed that the Contractor breached the PLA, and violated ERISA, the federal law governing employee benefit plans, by failing to make sufficient contributions for these apprentices.

Over a period of years while working under the PLA, the Contractor made contributions to the union benefit plan trusts for apprentices at the reduced hourly contribution rates for apprentices covered under the PLA. Unable to obtain electrical apprentices from the IBEW, the Contractor obtained apprentices from another state-approved open shop training program as required by California law. The trusts claimed, however, that because the apprentices had not been dispatched from the union training program, the Contractor was required to make contributions at the higher journeyman rate.

The Contractor argued that the apprentices were properly classified under the PLA, their work was restricted and supervised as required and they were employed only after the IBEW failed to dispatch in response to the Contractor’s requests. In addition, the

Contractor argued that while the PLA required the Contractor to use the union “referral system” to obtain employees, it also permitted contractors to use “core employees” and other non-union workers when union workers are not available. Because non-union workers may be employed under certain circumstances, such as when the union training program fails or refuses to dispatch apprentices, the Contractor understood that under the PLA it could hire apprentices from a non-union training program, employ them on the PLA project, and make contributions to union employee benefit plan trusts at the reduced apprenticeship rates.

The IBEW trust funds argued that the collective bargaining agreement’s contribution rates for apprentices were significantly lower than the journeyman rates, and that only apprentices enrolled in the IBEW training program could be classified as apprentices. Apprentices from non-union training programs are entitled to trust fund contributions in their behalf at the journeyman rates. The trustees asserted that the Contractor’s right to hire non-union apprentices when the IBEW failed to dispatch was “irrelevant” to the Contractor’s obligation to pay the higher journeyman rates to the trust funds under the PLA.

The Court Decision

After examining the terms of the PLA and the related collective bargaining agreement, the District Court judge agreed with the IBEW. The court found that the PLA definition of “apprentice” applied only to individuals enrolled in a “jointly managed apprenticeship program,” or IBEW training program. To support its ruling, the court looked to evidence outside the labor contract to determine the intent of the parties who negotiated and drafted the agreements. Under federal law, evidence concerning collective bargaining history and the parties’ contract interpretations is generally admissible. The lead negotiator for the Los Angeles and Orange Counties Building and Trades Council (“Council”), who participated in drafting the PLA was allowed to testify that the parties intended the term “apprentice” to mean only apprentices in union training programs. Earlier drafts of the PLA, which were entered into evidence, demonstrated that any broader definition of “apprentice” had been repeatedly rejected. The IBEW business manager also testified that a person cannot be an “apprentice” under the labor agreement unless the person signs an apprenticeship agreement with the IBEW training.

The court ruled that an apprentice for purposes of the PLA means an apprentice enrolled in the IBEW training program and that contribution rates for “apprentices” under the labor agreement meant contributions for apprentices enrolled in the IBEW training program. Even though the Contractor could hire outside of the union hall and the union training program, the Contractor could not make the lower rate contributions for these workers, because they did not meet the PLA definition of “apprentice.” After the court found the Contractor in violation of the trust agreements, it ordered the Contractor to pay the difference between apprentice and journeyman contributions. It also awarded the trust funds interest, liquidated damages, audit fees, attorneys’ fees as well as costs incurred by the trust funds in collecting the delinquent contributions.

The Message To Open Shop Contractors

Contractors working under PLAs must recognize that they are entering a potential world of pain with serious economic consequences. Judges defer to union interpretation of ambiguously worded labor agreements. There are few contract defenses to trust fund breach of contract and collection actions. Federal law encourages courts to interpret PLAs to provide “relief” to workers. Violating the terms of a PLA and related collective bargaining agreements can be very costly.

Compliance with state apprenticeship laws and regulations also may not provide a defense to a contractor that obtains registered apprentices from state approved open shop training programs after a union fails to dispatch. The California Apprenticeship Council (“CAC”) recently revised regulations governing employment of apprentices on public works. Under CAC Reg. 230.1, contractors on California prevailing wage projects must request dispatch of apprentices from each approved training program in the geographic area in its attempt to comply with the required apprentice-to-journeyman ratio. If a contractor operating under a PLA requests dispatch from a union training program but the program fails, or refuses, to provide sufficient apprentices, the contractor is required to request dispatch from approved open shop training programs in that area. Whether complying with this new state requirement may provide any defense to a union’s position that wages and contributions for such employees must be made at a higher journeyman rate has not been legally tested in litigation.

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