Legal Questions About Government-Mandated PLAs and Voluntary PLAs

May 29, 2012

In the landmark *Boston Harbor* case, the Supreme Court held that government-mandated PLAs are not prohibited by the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-169. [1] Sections 8(e) and (f) of the NLRA, 29 U.S.C. §§ 158(e) and (f) make special exceptions from other requirements of the NLRA in order to permit employers and unions in the construction industry to enter into PLAs.

The *Boston Harbor* court was not asked to decide whether government-mandated PLAs violate competitive bidding laws at either the federal or state level. As a result, nothing in the *Boston Harbor* decision requires or prohibits government entities from imposing PLAs on government construction contracts, as long as the government entity is acting as a *market participant* for services it is procuring.

On Feb. 17, 2001, President George W. Bush signed Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects." This Executive Order declared that neither the federal government, nor any agency acting with federal assistance, ***shall require or prohibit*** construction contractors to sign union agreements as a condition of performing work on government construction projects.

The Bush order was challenged by PLA proponents in a lengthy legal case, *Building and Construction Trades Department, AFL-CIO et al., v. Joe M. Allbaugh, Director, Federal Emergency Management Agency, et al.* The unions contended the Bush executive orders conflicted with the NLRA. In January 2003, the U.S. Supreme Court denied certiorari in the case, upholding the U.S. Court of Appeals for the District of Columbia Circuit decision, which upheld President Bush's Executive Order 13202 and 13208.

Section 517 of the MilCon/VA Appropriations for FY 2013 (H.R. 5854) closely mirrors the neutral language used in the Bush executive order and is consistent with legal precedents.

Under the Bush executive order, the federal government awarded $147 billion worth of federal construction contracts without any government-mandated PLAs. During the eight years of the Bush administration, there were no significant labor-related problems on federal construction projects (such work delays, cost overruns or similar problems), without any need for government-mandated PLAs. [2]

The *Allbaugh* case remains the controlling case on government-mandated PLA law. Governments can enact a position of neutrality when it comes to the use of PLAs by contractors.

Any questions about the recent Michigan case overturning Michigan's anti-government-mandated PLA law on state and state-assisted projects can be refuted by saying the activist judge's decision was incorrect. The *Allbaugh* case remains the controlling case on PLA law unless it is overturned by the U.S. Supreme Court. Section 517 to the MilCon/VA FY 2013 (H.R. 5854) bill mirrors the Bush executive order language and complies with the *Allbaugh* and *Boston Harbor* cases.

---

[1] Review the *Boston Harbor* case here: http://www.law.cornell.edu/supct/html/91-261.ZO.html

[2] See Prof. David Tuerck report, "Project Labor Agreements on Federal Construction Projects: A Costly Solution in Search of a Problem,"

Ben Brubeck, Director of Labor and Federal Procurement, Federal Affairs
(703) 812-2042
brubeck@abc.org