



ASSOCIATED GENERAL CONTRACTORS of WASHINGTON

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## Understanding Community Workforce and Project Labor Agreements

### Definitions:

**Project Labor Agreement (PLA)**—PLAs are unique to the construction industry and apply to both public and private construction. The terms and conditions of a PLA generally: (1) apply to all work performed on a specific project or geographic area, (2) require recognition of the signatory unions as the exclusive bargaining representatives for covered workers, whether or not the workers are union members, (3) supersede all other collective bargaining agreements, (4) prohibit strikes and lockouts, (5) require hiring through union referral systems, (6) require all contractors and subcontractors to become signatory to the agreement, (7) establish standard rules, hours and dispute resolution procedures and (8) establish wages and benefits. These agreements are privately initiated and negotiated.

**PLAs Negotiated Between Project Owners and Unions**—The National Labor Relations Board has held that labor unions and the owners of a construction project may not enter into labor agreements that require the owner's construction contractor and subcontractors to sign the PLA. A union entering into such an agreement has engaged in an unfair labor practice because, among other reasons, the agreements require the owner to not do business with another person (e.g., any contractor who would subcontract to nonunion subcontractors). In such a circumstance, the unions bear the affirmative defense burden of proving application of the "construction industry proviso," which in certain narrow circumstances allows for such union/owner agreements. To establish the proviso, the unions must show the owner is an employer in the construction industry, and the union and the owner negotiated the agreement in a collective bargaining context.

**Community Workforce Agreement (CWA)**—CWAs of the type at issue in this case are PLAs and should be subject to the same National Labor Relations Act laws as any other PLA. Whether a CWA entered into between a state or local governmental agency and unions is subject to these laws is an open issue for the National Labor Relations Board to decide.

### History:

PLAs have been in use since the 1930s when agreements were needed for major, multiyear construction projects like the Grand Coulee Dam and large atomic energy and defense

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construction projects. The goals of these agreements were to enhance competition, ensure labor peace and aid government agencies in achieving project deadlines.

Traditionally PLAs were used to enhance the competitive posture of the signatory contractor with respect to a specific project. Negotiations would be initiated by the contractor or union before a bid would be formulated to improve their mutual competitiveness. If successful, those new terms would control the performance of the work on the project.

When a state or federal agency enter into a CWA with the same objectives as a PLA, trade-offs among those objectives can have serious implications for competition and project costs and unfair treatment of employees of contractors and their subcontractors.

Often government negotiators with relatively little construction negotiation experience and close political connections with unions attempt to mandate conditions that reduce competition while giving away entitlements to unions that they would normally have to bargain for in exchange for concessions on other elements.

#### **WSDOT's CWA:**

WSDOT has awarded a contract for work on the SR520 project based on a CWA it negotiated with 17 unions during 2018. The terms of that CWA were developed entirely between WSDOT and those unions with no input or consideration of contractors or subcontractors who might actually employ the workers to complete the project. Nor was the CWA negotiated with a union representing employees of WSDOT.

The CWA has been imposed on all bidders as a bid specification. It forces non-union and union contractors to involuntarily recognize various local unions and forces their employees to join unions after 7 days or be discharged. Further, the CWA discriminates against non-union employees by providing that only 3 employees of an open-shop contractor's workforce could be employed on the project.

The unfair labor practices charge asserts that the conditions of the CWA violate provisions of Sections 7 and 8 of the National Labor Relations Act.