



CGEACTION

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UNIONS INCREASE EFFORTS IN CALIFORNIA

In the November 2003 *Geogram*, CGEA reported on efforts by organized labor to unionize the materials testing industry through use of Project Labor Agreements with a “top-down” approach. CGEA believes these efforts present a serious threat to public health and safety, creates a conflict of interest between union contractors and union materials testers, substantially increases construction costs to our clients and the public, and provides unions with the leverage to create work stoppages and costly project delays. This letter is intended to provide our membership with additional information on these activities so that our members may educate their clients and assist CGEA in combating the efforts of unions to infiltrate our business and profession.

HISTORY

On January 1, 2001, Senate Bill 1999 became law. It mandates land surveyors and soils and materials testers be paid prevailing wage in the design, pre-construction and construction phases on all public works projects paid for in whole or in part by public funds. SB 1999 was the first major successful push by unions in California to organize the field of construction materials testing. Three years later, unions have had little success organizing the materials testing industry despite enticing our employees with the allure of prevailing wage rates. As a result, efforts have shifted from the grass-roots approach of prevailing wages to a “top-down” approach.

CURRENT EFFORTS

Unions have begun approaching publicly-funded project owners directly and convincing them to sign Project Labor Agreements (PLA). The PLA requires that all construction inspection and materials testing labor provided on the project be union members. Recently, a southern California school district requested proposals from qualified environmental, geotechnical, and material testing firms for performance of soils and materials testing for upcoming construction, modernization, and expansion projects. All consultants interested in submitting a proposal were advised that the District had entered into a Project Stabilization Agreement (PSA) with various labor unions, and that the successful firm will be required to be signatory to the Master Labor Agreement. This is simply another form of PLA. The purpose of the PSA was stated to “promote the efficiency of the projects, contain project costs, boost the local economy, and provide for the peaceful settlement of labor disputes and grievances without work interruptions”.

Similar PLAs have surfaced in contracts with a northern California municipal utilities district. The PLA in the district contract was buried in the fine print of the text and was not brought to the direct attention of the proposing firms. When asked about the PLA, district representatives admitted they entered the agreement without fully understanding the impacts or ramifications of its breadth. The full impact these agreements may have on daily operations of non-union firms is not known.

THE IMPACT

The unions' claims of cost savings and increased efficiency are misleading and our clients must be educated about the consequences of "top-down" organizing. Compulsory unionization of the projects will inevitably increase costs through increased cost of labor. It will be detrimental to the local economy as development and growth slows due to the increased project costs. It will provide the union with the influence to call disruptive labor strikes and erect picket lines creating work stoppages and costly construction delays. It also poses a serious risk to the health and safety of the public by fostering an allegiance between the technician and the union contractor instead of with the responsible engineer. It creates a serious conflict of interest as the contractor, soils technician, and the inspector are members of the very same union. Union members take an oath not to criticize the work of a fellow union member thereby restricting the nature of reporting deficiencies of union contractors. This oath could create a conflict of interest for a union inspector that also has a duty to communicate deficiencies to the Engineer of Record.

CGEA recognizes the legal right of our employees to organize, should they choose to do so. However, our employees generally recognize the detriment unionization may have on their future. We commend our technicians' courage in resisting the temptations unions have placed before them, and we resent the unions continued efforts to impose their will on our profession. Our technicians have said "no" to unionization; however, the unions continue to pursue them and will use a PLA or PSA to force geotechnical firms to sign a Master Labor Agreement and thereby require our employees to become union members whether they want to or not. This deprives our employees of the right to self-determination of any union affiliation.

Van A. Goodwin, a Partner in Littler Mendelson, a national labor and employment law firm, cautions that the union contract that a firm will be asked to sign often may NOT be restricted to a single project and must be terminated in a very precise and timely manner, and that the firm may have to bargain with the union in order to escape from the contract. In addition, whereas non-union firms who work on prevailing wage projects can either provide wages and fringe benefits that satisfy the per diem prevailing wage rate or pay employees the differential, under a union contract the firm must remit contributions into a union trust fund for what are essentially phantom "fringe benefits" that employees will most likely never receive because of eligibility and length of service requirements. According to Labor Law Attorney Goodwin, this means that the employees really get nothing out of the union contract and the contributions paid by erstwhile non-union firms go into the coffers of the union trust funds without benefitting any of the employees on whose behalf the contributions are paid.

Some relief may be realized with the recent change in California government. However, we should not sit by and do nothing while unions continue to pursue our clients. We strongly encourage our members to directly contact each of their publicly-funded clients and educate them on the ramifications of PLAs and encourage them to steadfastly resist the threats of the unions. CGEA is committed to keeping our members thoroughly educated on union activity. If you are asked to sign a PLA or are witness to other coercion at the hand of the union, please contact CGEA immediately.

THE ACTION

It is critical that you take the time to discuss this issue with your clients. You have CGEA's permission to distribute this document to your clients as you feel appropriate. You will also receive an electronic version of this article for ease of distribution.