

NEWS & INSIGHTS

Project Labor Agreements and the Public Works Open Contracting Act (House Bill 1849)

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Earlier this month, I attended Free Enterprise Day in Harrisburg with [Associated Builders and Contractors, Inc. of Pennsylvania](#). ABC is a [national trade industry association](#) that defends “free enterprise” in the construction industry, *i.e.*, the “merit shop philosophy” that encourages open competition in government contracting and awards said contracts solely on merit.

On Free Enterprise Day, members of ABC from across the Commonwealth convened in the Capital to discuss [issues important to the construction industry](#) with our state legislators. The main agenda topics included (1) government-mandated project labor agreements, (2) apprenticeship reform, and (3) paycheck protection.

Over the next few weeks, I plan on discussing each of these issues in a little more detail. This week, we will tackle project labor agreements.

Project labor agreements (commonly-referred to as PLAs) are “agreement[s] between a government authority and a collection of unions represented by a council (often a construction trades council) which applies to parts of a construction project.” *A. Pickett Constr., Inc. v. Luzerne County Convention Ctr. Auth.*, 738 A.2d 20, 21-22 (Pa. Cmwlth. 1999). The terms contained in any PLA may vary because it is arguably a negotiated contract document. See 738 A.2d at 22.

As used in the construction industry, the Commonwealth and its agencies and political subdivisions issue PLAs at times that require a successful bidder to utilize a workforce affiliated with a designated labor organization. Under the purview of a PLA designating such a workforce, an open shop company is effectively precluded from the competitive bidding process because it cannot use its own employees to work on the taxpayer-funded project.

Almost 20 years ago, the Commonwealth Court concluded “the mere inclusion of a PLA” in a government contract “does not constitute illegal discrimination” against open shop companies. 738 A.2d at 26.

In an attempt to eliminate the use of PLAs in government contracting, Representative Stephen Bloom (R-Cumberland) recently introduced [House Bill 1849 — the Public Works Open Contracting Act](#). The Open Contracting Act would prohibit public bodies from requiring successful bidders or their contractors or subcontractors to utilize laborers represented, referred, or otherwise affiliated with a designated labor organization. The House of Representatives’ State Government Committee heard testimony on the Open Contracting Act earlier this year. This testimony confirmed that the passage of the Open Contracting Act would strengthen the open, competitive bidding process on taxpayer-funded projects and result in lower contract costs throughout the Commonwealth.

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