

Short Form Can Be Long Term

When Signing An Agreement, Know The Facts About How It Will Impact Your Business

BY STEVEN H. ADELMAN
Lord Bissell & Brook LLP


The construction industry is unique with respect to certain aspects of federal labor law. For example, an employer confronted by a union organization attempt ordinarily has the right to refuse

recognition of the Union unless there is proof that a majority of the employees have designated the Union as its collective bargaining representative. In fact, it is generally a violation of the National Labor Relations Act ("NLRA") for an employer to recognize a Union as the bargaining representative of its employees without

proof of the Union's majority status. But the construction industry is exempt from this requirement. Rather, Section 8(f) of the National Labor Relations Act allows employers to recognize a Union as the exclusive bargaining representative of its work force even before any employees are hired!

In view of this ability to obtain instantaneous recognition without having to prove that a majority of the employees want to be represented by a union, unions in the construction industry have developed a document that is generally referred to as a "short form agreement". The short form agreement often consists of only one or two pages – but it can bind an employer to a collective bargaining agreement that contains so many restrictions and obligations that it takes over 100 pages to cover them all. Generally, the short form agreement specifically states that, by signing it, the employer is bound by the collective bargaining agreement that the Union has negotiated with one or more trade associations in the area. Sometimes the agreement covers multiple geographic areas. It is therefore very important for an employer to review a short form agreement thoroughly to make certain that it knows the full implications of what it is signing before it actually signs such an agreement. If an employer is not certain as to what the agreement means, it is critical to get advice from an experienced labor lawyer or other person experienced in the area of labor relations – not from the Union. A recent decision from the National Labor Relations Board ("NLRB") highlights what can go wrong when you rely on a union to explain the meaning of the short form agreement.

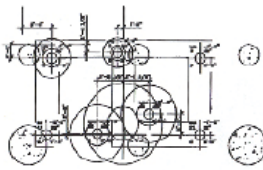
In Horizon Group of New England, 347 NLRB No. 74 (2006), the company ("Horizon") was awarded a contract for work on three schools in Burlington, New Jersey. The work was covered by a Project Labor Agreement ("PLA"). At that time, Horizon was not a party to any collective bargaining agreements. A



**FULL SERVICE
LAND & CONSTRUCTION
SURVEYING COMPANY**

WE ARE:

WBE Certified with City of Chicago
Member of Union Local 130
Fully Insured



PROFESSIONALS ASSOCIATED

Construction Layout & Survey Co., Ltd.
EST. 1960

RADA PAVLOVIC
President

7100 N. Tripp Ave.
Lincolnwood, Illinois, 60712
Phone: (847) 675-3000
Fax: (847) 675-2167
E-Mail: PROSURV1@SBCGLOBAL.NET



**GROVE
Masonry
Maintenance, INC.**

4234 West 124th Place
Alsip, IL 60803
Ph: 708-385-0225
Fx: 708-385-1107

"Preserving Chicago's Skyline from the Ground Up"

- Masonry Restoration
- Building Inspections
- Terra Cotta Repair and Replacement
- Facade Repairs
- Tuck Pointing
- Caulking / Sealing
- Concrete Restoration

www.GroveMasonry.com

please see Labor, page 14

Labor, from page 6

representative of the Laborers Union visited the job site and gave the Project Manager a document entitled “Short Form Agreement” to sign, as well as a copy of the collective bargaining agreements between the New Jersey Labor District Councils and a statewide contractors association. The Project Manager asked the Union Business Agent what the documents were for, and the business agent answered that the Project Manager needed to sign the Short Form Agreement “to get men to work.” When the Project Manager asked if the Short Form Agreement was part of the Project Labor Agreement, the Union Business Agent answered in the affirmative. The Business Agent made it clear that there would be “trouble” on the job if Horizon did not sign the agreement. The Project Manager asked for time to review it further, and he then consulted with one of the owners of Horizon (the Project Manager’s brother). Being concerned about the threat of trouble and knowing that the PLA required the work to be done by Union-represented employees, Horizon agreed to sign the Short Form Agreement.

After the three-school project in Burlington was completed, Horizon sent a letter to the Union terminating its labor agreement. The letter was sent in September 2003. However, the collective bargaining agreement was not scheduled to expire until April 2007, almost 3 ½ years after the termination letter was sent. The collective bargaining agreement specifically provided that it could only be terminated at the time of its expiration, and, even then, the employer was required to send a non-renewal letter 90 days prior to the agreement’s expiration or it would be automatically renewed for an additional year.

A few months after sending the (invalid) termination letter, Horizon began performing work at another school in New Jersey. This project was not covered by the PLA. Several months later, the company received a contract to perform work at another school in New Jersey. Again, there was no PLA applicable.

Sometime after each new job was started, the Laborers Union made a demand that Horizon apply the collective bargaining agreement. The Union took the position that Horizon was required to follow the collective bargaining agreement at these other projects in New Jersey because the recognition clause of the collective bargaining agreement specifically stated that the Employer recognized the Building and Construction District Councils and Local Unions covered by the CBA as the sole bargaining representative for all employees employed by the Employer throughout the State of New Jersey with respect to

work within the scope of the collective bargaining agreement. The Union also said that the termination letter was not effective, because it was untimely. When Horizon refused to follow the collective bargaining agreement at its other construction sites in New Jersey, the Union filed labor practice charges with the NLRB.

In the NLRB hearing on the unfair labor practice charges, the company claimed that the Short Form Agreement should not be binding because it was procured by “fraud in the execution”. While a 3-member panel of the NLRB agreed that the Union misrepresented the Short Form Agreement when it said that it was part of the Project Labor Agreement, a 2-1 majority of that panel concluded that the Short Form Agreement was so clear as to its scope that Horizon did not have the right to rely on the Unions misrepresentation.

The NLRB panel majority also found that there was no “fraud in the execution,” because the company could not prove it signed the Short Form Agreement in reliance on the Union’s misrepresentation. Rather, the NLRB said that there was evidence that Horizon decided to sign the document to avoid the “trouble” that was threatened. The NLRB panel majority also found that Horizon was not off the hook simply because the Short Form Agreement did not specifically state that it covered all projects in the state of New Jersey. Instead, they found that it was the company’s obligation to review the full collective bargaining agreement, since the Short Form Agreement specifically stated the company was being bound to that collective bargaining agreement.

The final result -- Horizon was bound to the collective bargaining agreement for all of the other jobs it did in the State of New Jersey. Therefore the company owed back wages for the differential between the rate it paid the employees and the wage rate set forth in the CBA. Additionally, it owed money to all of the Union trust funds for all the hours worked by the jobsite employees (even though they were not members of the union).

Clearly, Horizon Group learned a very expensive lesson – a short form agreement can create a very long term obligation. That company now knows that, when presented with such an agreement, it is not only critical to get a copy of any collective bargaining agreement being adopted by signing the Short Form Agreement, it is important that a knowledgeable determination be made as to how adopting such an agreement will impact the contractor’s business.

Steve Adelman is a partner at Lord Bissell & Brook and has concentrated his practice in labor and employment law for over 30 years. Contact him at sadelman@lordbissell.com.

Spotlight, from page 2

Building elements such as recyclable materials and fast growth products, mechanical systems for better indoor breathing quality and daylight harvesting which detects and measures the daylight levels and adjusts the output level of electrical lighting to create a balance saving energy.

While Sollitt is a veteran to Green Building this is a first for the Orland Park community.

“Going ‘green’ is the right thing to do,” Dan McLaughlin, Mayor of Orland Park said.

“LEED certified buildings create healthier workplaces, conserve energy and protect the environment,” McLaughlin said. “We hope that our having the first LEED certified building in the community sets an example for future construction in Orland Park.”

“Achieving LEED Certification was the most difficult aspect of this project.” Jim Zelinski, Sollitt Vice President said, “Such as finding the right materials to make a sustainable sound building with less impact on the environment.”

Green Building’s main purpose is to

design a sustainable design/build which minimizes environmental impact and energy consumption. It is a two step process in which the architect and contractor work closely together in which they mutually decide how many points they are trying to achieve to receive a LEED certification.

“The industry is driving us” Lena said “The LEED system is a constant learning process and is looking to architects and builders innovation and completed ‘green’ projects to improve the point system.”