



AGC MAINE

THE CONSTRUCTION ASSOCIATION

February 8, 2024

Senator Tipping
Representative Roeder
Distinguished Members of the Labor and Housing Committee

Delivered Electronically

Chairs and Members of the Committee,

This letter is a follow-up to the public hearing on LD 373, a concept bill that was presented with a new *labor harmony agreement mandate*. There was a clear distinction between proponents and opponents on the outcome of enacting a bill that would require the use of labor harmony agreements, also known as labor peace agreements, for direct and indirect state procurement. The reason for this letter is to clarify our position as to why we believe this will lead to additional labor union conditions like a project labor agreement or unionization of the workforce.

I'd like to clarify AGC Maine's concerns, as labor policy can be complicated. In simplistic terms, the proposed language doesn't directly require a project labor agreement, but labor harmony agreements and project labor agreements go hand in hand. In the language presented it contained very few details on what could and shouldn't be contained in the language of the contract. The harmony agreements we reviewed contained project labor agreements as a condition. The fact is, this bill opens the door for labor unions to draft a contract with any conditions, and that is especially concerning in our market given the makeup of the industry. If the Maine company prefers their current business model, whether employee-owned or privately held, they won't be inclined to sign a harmony agreement.

If the intent of the Committee as indicated at the hearing is to prevent work stoppages or picketing that language can simply be added to existing contracts where it doesn't already exist. Additionally, we are unaware of an open shop construction situation where skilled workers refused to perform work related to a labor dispute. Generally, existing contracts already address contractor disputes, but it's important to note that the two most used nationally recognized contracts do not specifically contain language on labor harmony agreements.

The Committee should also expect legal challenges to occur from all interested parties. In other states where labor harmony agreements have been executed, both labor unions and open shops filed disputes with courts of jurisdiction. That will disrupt stated goals for energy, transportation, and broadband. According to a review of labor harmony agreements, an arbiter is required when a dispute on the contract arises. Knowing the targeted projects are vitally important to Maine residents, we remain concerned adding this new condition will cause delays, and or project cancellations.

From a practical standpoint, the response to questions from the Committee on why they wouldn't sign or bid on projects with a labor harmony agreement is because they fully expect a project labor agreement, or the general conditions of those agreements, will be a requirement as stated at the hearing. In a PLA, total control of the labor pool is turned over to the union management. Meaning that a private contractor could be required to replace an existing worker at the will of union management. What the Committee heard from AGC members reflects the value many share of working for a locally owned firm with their colleagues rather than moving between companies, certainly a more common practice for union workers.

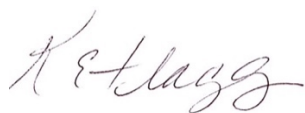
Lastly, there was a discussion that the current market isn't providing adequate protections and compensation for workers, and this would improve those conditions. I believe Representative Geiger shared that sentiment through her experience in the medical field. Construction is vastly different, and we reject the notion that the only successful pathway is through forced unionization. State contracts for work include minimum wage requirements through Federal or State Davis Bacon. For example, in Kennebec County, the Federal Minimum wage for an equipment operator is \$40.83, allowing a combination of wages and qualified benefits to meet that threshold. Additionally, pre-qualification already requires financial and safety submissions and review by Department staff.

For private work, construction contracts have become more complicated, and between insurance, finance, and developer conditions, often including insurance bonding requirements to eliminate risk and deliver both end-user, developer, and worker benefits. Regardless of public or private work, the competitive market has resulted in a construction compensation premium and resulted in better wages and benefits in the commercial construction industry. If workers wanted to organize today, they can, and what the Committee heard at the hearing should be a clear indication when 20-30-year employees testified that they prefer their current open shop model.

Unfortunately, this issue continues to be so divisive. Both open shops and union business models have their place in the industry. This bill isn't about workers, it is utilizing a political process to assist labor unions gain market share at the detriment of locally owned Maine businesses and their skilled workers. If labor unions believe they have stronger compensation and benefits, this wouldn't be necessary.

I am happy to answer any questions at future work sessions but urge the Committee to support the workers and businesses who shared their concerns, they are essential to Maine's continued progress in clean energy, transportation, and communication.

Sincerely,



Kelly Flagg, Executive Director

Enclosed: Sample Harmony Agreement

AGC MAINE EXHIBIT 1

SUMMARY OF LABOR HARMONY AGREEMENT WITH ORGANIZED LABOR

A. A signed Agreement dated May 17, 2013 between the Applicant and the New York Hotel and Motel Trades Council. This Agreement is commonly referred to as a “Card Check Neutrality Agreement”. The stated purpose of the Agreement is “to ensure that the employees in the below described bargaining unit(s) has the opportunity to express their desire whether or not to be represented for the purposes of collective bargaining in an atmosphere free from intimidation, restraint, coercion or discrimination and further; that any organizing dispute may be resolved amicably by arbitration and without resort to litigation or proceedings before the National Labor Relations Board, Courts or other governmental agency.”

Consistent with the purpose of the Agreement, the Union:

- Is given the right to refer applicants for vacant positions even before the Union is the certified bargaining representative.
- Supervisors, including their agents and representatives, are prohibited from making any statement that will directly or indirectly imply the Employer’s opinion of whether or not the employees should unionize or as to the reputation of the union or any of its officers.
- The Union is permitted to have its organizers or representatives enter the site to meet with employees.
- The Union can request that the card count can be scheduled on 48 hours’ notice.
- The card count determined by an Arbitrator is final and binding.
- If the Union is certified as the majority representative, the Employer must recognize the Union and “promptly and expeditiously commence negotiations.’
- If the parties are unable to reach an agreement, the Arbitrator is empowered to act as interest arbitrator to resolve the terms of the parties’ collective bargaining agreement.
- The Agreement does not have an expiration date; the Union has an indefinite period of time to exercise its rights, establishing great likelihood that the Project will consist of employees represented by the Hotel Trades Council.

The unit(s) which the Hotel Trades Council may organize is exceedingly broad covering all of the following classifications and “any departments or classifications performing similar work under another name, or any combination of such classifications” :

Hotel, Conference Center, Restaurant, Bar, Banquet, VLT, Casino, Slot Attendants, Cashiers (including booth and cage), Hard and Soft Count Employees, Change Persons, carousel Attendants, Dealers, Hosts, Guest Service and Players’ Club Representatives, Housekeeping, Cleaners, front Service, PBX, Front Desk, Engineering, Maintenance, Reservations, Banquets, Room Service, Kitchen, Stewarding, Food and Beverage, Bar, Dining Room, Employee Cafeteria, Laundry, Valet, Parking, Coat Check, Shipping and Receiving, Business Center, Audio Visual, Health Club, Spa, Minibar, Security, and Concierge.

B. “A Project Labor Agreement for the Construction Related to the Nevele Resort, Casino and Spa” between the Applicant and the Local Union affiliated with the Hudson Valley Building and Construction Trades Council.

Based on the foregoing, Applicant responds to the specific questions as follows:

1. The number of employees to be employed at the proposed Gaming Facility, including detailed information on the pay rate and benefits for employees and contractors.

Answer: As set forth in the Agreement with the Hotel Trades Council, the wages and benefits applicable to the unit employees will be negotiated between the parties, or determined by an Arbitrator. At this time, Applicant projects that there will be 1,721 employees covered by the Agreement with the Hotel Trades Council in addition to another 629 non-union and managerial employees.

2. The total amount of investment in the proposed Gaming Facility and all infrastructure improvements related to the project.

Answer : \$527,097,895

3. Completed studies and reports including an economic benefit study, for the State, the Region, and the Host Municipality, and

Answer : The referenced studies have been completed, inserted in this RFA in the requested exhibit sections and shared between the parties relevant to this labor harmony exhibit.

4. Detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the Gaming Facility.

Answer: Labor harmony throughout the construction of the Project is assured on the basis of several provisions in the aforementioned Project Labor Agreement. In order to eliminate potential jurisdictional disputes, the Project Labor Agreement has a "Grievance and Arbitration Procedure" to resolve "any question, dispute or claim arising out of or involving the interpretation or application of the Project Labor Agreement. This binding dispute resolution process covers the entirety of the construction phase of the Project - the construction, renovation and development of the facility. The protections in the Project Labor Agreement contains against possible jurisdictional disputes between the Unions extends to" any strikes, sympathy strikes, work stoppages, shut downs, picketing or other disruptive activity of any kind." The Local Unions further commit that no jurisdictional dispute shall affect construction of the various contractors of the Project "or the progress of the Project."

Labor harmony during the construction of the Project is additionally enhanced by a comprehensive "No Strike – No Lock Out provision", as follows:

ARTICLE 7 – WORK STOPPAGE AND LOCKOUTS

Section 1. No Strikes, No Lock Out

"There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdown, hand billing, demonstrations or other disruptive activity at the Project site for any reason by any Local Union or Employee against any Contractor or Employer while performing work at the Project site, except for non-payment of wages and benefits as per Schedule A. There shall be no other Local Union or concerted Employee activity which disrupts or interferes with the operation of the Project. Failure of any Local Union or Employee to cross any picket line established by any union signatory or non-signatory to this Agreement or the picket or demonstration line of any other organization, at or in proximity to the Project site is a violation of this Article 7. There shall be no lockout at the Project by Owner or any Contractor. Contractors and Local Unions shall take all steps necessary to ensure compliance with this Section 1.

The Agreement with the Hotel Trades Council covering the indefinite time period that the Union has to organize employees prohibits the Union from causing "any disruption of work, picketing, strikes, slowdowns, boycotts, demonstrations, rallies, handbilling, corporate campaigns or other work stoppages of the Project. The Applicant agrees not to lock-out the employees. There is also an express commitment by the Applicant that it will not lock out the employees."

5. The Agreement with the New York Hotel Trades Council, commonly referred to as a Card Check Neutrality Agreement, is a streamlined and simplified non-adversarial approach by which the Hotel Trades Council may gain the right to represent the Project employees for collective bargaining. The New York Hotel Trades Council is the premier hospitality union in New York State representing over 32,000 employees in hotels, motels, restaurants, clubs, catering and gaming establishments in the State.

As discussed, the Agreement with the Hotel Trade Council assures labor peace at the Project even before the Union is certified as the collective bargaining representative of the employees. This protection is asserted by the broad and sweeping prohibition on strikes and lockouts during union organizing and covers all non-managerial employees. Most significantly, this prohibition continues from the organizing stage through the bargaining process and the execution of the parties' collective bargaining agreement.