

CLR CAMP NEGOTIATIONS UPDATE, MAY 7, 2009

Interests of the BTA Appointed Negotiation Committee (BTA):

The BTA's interest involves, primarily, having an enforceable, reasonable minimum standard of remote accommodations for their members. The BTA also has expressed an interest in having a local process in all camps for addressing and resolving complaints and a recourse procedure in the event the local process does not resolve issues. The BTA alluded, during bargaining, to an interest in being able to communicate to their members, prior to the members' decision to accept a call, what to expect in respect to the accommodations utilized by the Project. The BTA also alluded to an interest in having the ability to re-inspect certified owner and third-party provided camps. (There is no provision for this in the recently expired Camp Agreement.)

Interests of the CLR appointed Negotiation Committee (CLR):

The REOs accept the BTA's interests as valid and share the same objectives. The CLR believes it is in the interest of all stakeholders (clients, camp providers, member contractors, and union members) to have reasonable standards defined for remote accommodations. The CLR believes that the Camp Agreement represented a sound practice as to how camps ought to be built and managed and regularly encourages owners and third party camp providers to follow the specifications and processes contained therein.

In addition, the CLR wants access to as much work as possible for REO member contractors; the CLR does not want contractors to be competitively disadvantaged when it comes to working on sites where owners and third party camp providers make decisions concerning camp specifications and processes beyond the control of the contractor.

The Problems:

(a) Status of Owners and Third Party Providers

In today's reality, due to owner labour relations and contracting strategies, all remote camp accommodations are provided by owners and/or third parties rather than by contractors. Since a camp agreement between the CLR and the BTA cannot bind an owner or a third party provider to terms and conditions contained in the agreement, an owner or a third party provider can freely choose to

- (i) be a party to the full agreement,
- (ii) adopt certain provisions of the agreement or
- (iii) remain outside of the agreement entirely.

A decision made by an owner or a third party to sign on as a party to the Camp Agreement would typically be made at a high level in the company, outside the boundaries of the project, and by people with whom the CLR and its member contractors have no relationship. Such decision-makers (and their lawyers) might ask why they would agree to be bound by the entire agreement, making every term and

condition legally enforceable against them, without a valuable benefit in return. They might believe they could attract and retain workers using their own business model without signing on to the Camp Agreement. In situations where projects are classified as “open-shop,” there may be political and business reasons why an owner or third party provider would refuse to sign on as a party.

On the other hand, a decision to voluntarily adopt certain provisions of the Camp Agreement (i.e. agreeing to be inspected by an REO/BTA committee) would typically be made by someone with a direct relationship to the project, the REOs, REO member contractors, the BTA and BTA affiliates. This decision would attract less legal exposure and would therefore not likely require the intervention of a lawyer.

(b) Competitive Disadvantage

In today’s economic downturn, industrial construction work is not experiencing the rapid growth of recent years. More and more, REO member contractors are bidding against non-Building Trades contractors for work. Initiatives should be supported that increase access to work – those that restrict access should be avoided.

If a camp agreement limits contractors to bidding on and performing work at camps that agree to be bound by the Camp Agreement, contractors (and, therefore, union members) would lose work opportunities where an owner or third party provider declined to voluntarily sign on. A contractor deciding whether to bid on work where the camp did not comply with one or more of the specifications and/or processes required by the Camp Agreement would be forced to decide between declining to bid (forcing the client to hire non-Building Trades contractors) or bidding the work and accepting the exposure to increased labour relations risk. Adding difficulties to this scenario is the reality that the bidding process sometimes occurs before decisions are made about camps – contractors decide whether or not to bid without knowing the entity or entities that will be providing the camp(s), the specifications to which the camps will be built, or what processes will be involved in the management of the camps. In a case such as this, if a contractor’s bid is accepted, the contractor would become contractually bound to perform the work even where the camp provided does not comply with the agreement. In addition, an owner may intend to use non-Building Trade contractors on a project and later switch out those contractors for Building Trade providers; accommodations may not be set up accordingly.

CLR’s Initial Proposal

Initially, the CLR proposed that the Camp Agreement would apply in its entirety to all contractor-provided camps but that Articles 2.02 through 14.05 (inclusive) would not apply to circumstances where accommodations are provided by third parties or owners/clients, full stop.

Difficulties with CLR’s Initial Proposal:

CLR’s Initial Proposal, leaving the owner and third party camp providers entirely outside of the Camp Agreement, did not address the BTA’s and CLR’s shared interest in maintaining a reasonable minimum standard of remote accommodations.

BTA's Solution

The BTA has offered the solution that owners and third party camp providers be invited to sign the camp agreement, becoming a party to the agreement and thereby agreeing to comply with all of its provisions (specifications and processes). Failure of an owner or third party camp provider to sign the agreement would mean that the BTA would not certify the camp in question. Contractors would not be permitted to accommodate workers at such camps and, if they chose to do so, could be exposed to grievance procedures. Failure of an owner or third party provider to maintain compliance with the Camp Agreement once it became a signatory would mean that a union member could grieve the owner or third party provider for non-compliance.

Difficulties with the BTA Solution:

The BTA's proposal would put REO contractors at a competitive disadvantage and would expose them to costly grievance proceedings when bidding and working on projects serviced by an owner- or third party-provided camp where the camp did not comply with the Camp Agreement. This would be the case even if the owner/third party simply did not wish to sign on as a party to the Camp Agreement but was otherwise in compliance with its specifications. The CLR cannot agree to bind its member contractors to the effect of decisions made entirely outside of their control. When faced with an owner/provider who chooses not to sign on or be inspected, or a project that only has accommodation that does not meet all of the specifications contained within the Camp Rules and Regulations, for the CLR, it would come down to a simple question: "do we want the work or don't we?"

Challenges at the Bargaining Table:

CLR believes that one of the biggest obstacles encountered at the bargaining table is the CLR's perception that the BTA committee as a whole does not appear to recognize CLR's interests as valid and warranting consideration (in particular CLR's interests in ensuring fair contractors are not disadvantaged relative to CLAC and non-union competitors in securing work). This has hampered, in the CLR's opinion, the ability to "hear each other" and joint problem-solve at the table. Competitiveness in providing construction services is not just a CLR issue; it is both the CLR's and the BTA's issue.

An effort to address both sets of interests

The CLR wants to explore a solution whereby the Camp Agreement remains as between the REOs and the BTA (i.e. the scope of the agreement would be defined as per the CLR's Initial Proposal) but that, in the preamble, both parties would pledge their endorsement for and encourage the adoption of the specifications contained in the Agreement. An Appendix would be added to the Agreement that would allow any owner or third party camp provider to request an inspection by the CLR/BTA Committee. Such inspection would be measured against the specifications contained within the Camp Rules and Regulations and, after the inspection, a certificate would be issued reflecting one of the following outcomes:

- (a) the accommodation passed the inspection,
- (b) the accommodation passed the inspection, on the whole, but there are deficiencies (with a list of such deficiencies appended), or
- (c) the accommodation failed the inspection.

Owners and third party camp providers would be provided with the opportunity to request a re-inspection upon correction of deficiencies. Owner/provider agreement to participate in any of the processes herein would not result in a bargaining relationship with the BTA or any union or local union.

A list of certified owner and third party provided camps (and any deficiencies, where applicable) would be made available to members of the building trade affiliates. Decisions on what job to accept could be made on an individual member basis, in part or entirely, on whether a camp is certified or not, or if applicable, what deficiencies exist. The member would know the status of accommodation before accepting work on the project. A contractor could still bid on jobs serviced by a non-compliant camp, without fear of grievances relating to the non-compliance, and would recognize that attracting and retaining workers to that site could be hampered by the non-compliant camp. The contractor in such circumstance would be required to manage that situation. An owner or third party's decision to operate a camp without a certificate, or with a certificate with deficiencies, could not result in a coordinated refusal to work.

At those camps for which a certificate had been issued (with or without deficiencies), a complaint process defined by the Owner/provider would allow reasonable disputes to be handled locally. If the local process is not satisfactory to resolve the issue, the matter could be brought up by the job steward to the employing contractor who would be afforded an opportunity to resolve the issue with the provider. In the event that did not resolve the issue, the matter could be brought to the BTA/CLR Camp Committee for investigation and if applicable would undertake to find a resolution.

After a certificate is issued, a camp could be re-inspected where certain trigger events occur and, if necessary, a certificate could be altered or revoked.

A formal proposal outlining the above is being drafted, which will be distributed to the BTA and CLR committees' consideration at our next meeting.

Limitations to the above framework:

Even though the above framework rewards owners and third party providers that choose to agree to be inspected and that choose to comply with the specifications contained in the Camp Agreement, the proposal still recognizes that neither the CLR nor the BTA can force an owner or third party provider to agree to be inspected or to agree to adopt the minimum standard. Where an owner or third party provided camp does not comply with the Camp Agreement specifications, a union member would not have recourse against the owner or third party provider or employer other than to decide not to perform work on the project(s) involved.