

CONSTRUCTION INDUSTRY CARVE-OUT AGREEMENTS

INTRODUCTION

The general rule is that registration and its resulting collective agreements bind unions and unionized employers in the construction industry. The [Labour Relations Code](#) creates an exception to this for major construction projects. With Cabinet approval, those undertaking major projects can negotiate strike-free project agreements that fall outside the regular construction registration agreements. People often call agreements negotiated under these sections “carve-out” agreements, because they cover a project carved out of the normal scope of registration.

This policy describes the [Labour Relations Code](#) provisions allowing major construction project “carve-out” collective agreements. This policy describes:

- reasons for allowing carve-out agreements;
- which projects qualify and how;
- how bargaining takes place;
- who carve-out agreements bind; and
- how carve-out agreements affected other agreements.

REASONS FOR ALLOWING CARVE-OUT AGREEMENTS

Registration bargaining takes place on a two-year cycle. This means once every two years unions or employers may engage in a lockout or a strike. This biennial negotiation cycle provides a stable way to adjust terms and conditions periodically. A strike or lockout can have a devastating effect on the owner of a major project. Owners have to borrow money to build their plant. Each day’s lost production means an extra day’s interest on millions or sometimes billions of dollars. This is in addition to the extra day’s delay in getting production on stream.

Owners will often not build a project unless they have some guarantee, in advance, that they can build their project without interruption by a lawful strike or lockout. Part 3, Division 8 of the [Labour Relations Code](#) recognizes this. It allows owners and their principal contractors to ask for Cabinet permission to negotiate a project agreement. Such an agreement, once negotiated, becomes an exception to registration. The Code excludes the project from registration agreements that would otherwise apply. Registration bargaining, and any strike, lockout or construction dispute resolution tribunal has no application to the project while the project agreement remains in place.

The *Labour Relations Act* allowed a form of carve-out agreement for tar sands projects. The carve-out agreements under the Code are quite different. Under the Code, once approved, it is up to the parties to negotiate the rates for the project. Project agreements do not just “pick up” the rates periodically negotiated under registration. This means carve-out agreements may provide for better rates than registration agreements. This can result in carve-out projects drawing labour from other projects and putting economic pressures upon registration negotiations.

WHICH PROJECTS QUALIFY, AND HOW?

The project must be for the construction of a plant or other work or undertaking “for the production or manufacturing of petroleum products, natural gas products, pulp and paper products or any other products specified in the regulations.” See: [[Section 194\(1\)\(a\)](#)]. Construction can include an alteration or addition to an existing plant. It also includes camp catering for such a project. The Lieutenant Governor in Council (i.e., the Provincial Cabinet) can designate other products whose plants can qualify. So far, it has not done so.

A person involved in a proposed major project can apply to the Minister for approval. If the Minister thinks the project is significant to Alberta’s economy, the Minister takes the request to Cabinet.

If Cabinet finds it in the public interest to do so, it passes a regulation. This authorizes the principal contractor to engage in collective bargaining for a carve-out project agreement. The regulation sets out the owner, the principal contractor and the scope of the project. It also defines project completion.

HOW BARGAINING TAKES PLACE

Bargaining for a site agreement must be voluntary. If the principal contractor and the unions cannot voluntarily agree on terms, then the ordinary agreements (normally under registration) prevail. Section 197(6) prohibits strikes and lockouts over the negotiation of a carve-out project agreement.

A regulation granted under this Division authorizes a principal contractor to do the collective bargaining. It can do so on

its own behalf and on behalf of any other employer engaged in the project...

It can do so

with any trade union that is a bargaining agent of the employees of the principal contractor or of the employees of those employers referred to in this subsection.

The other employers referred to are the sub-contractors. See: [[Section 197\(1\)](#)].

The principal contractor can bargain on a union-by-union basis. The Code does not require multi-trade bargaining. If some trades do not agree, their normal collective agreements or registration agreements continue to apply to the project. Usually the owner will not proceed with construction until the principal contractor has project agreements for all trades.

Project carve-out agreements can cover any terms and conditions for employees engaged on the project represented by the union. See [[Section 197\(2\)](#)].

The parties can set the term of their agreement. It need not have a specific expiry date and is not deemed to be for one year. See: [[Section 201\(1\)](#)]. Unlike registration agreements, they need not expire on April 30th each second year. Normally, they will last until the completion of the project or a phase of the project, perhaps as defined in the regulation. See: [[Sections 199\(3\)\(b\) and 199\(5\)](#)].

WHO CARVE-OUT AGREEMENTS BIND

The principal contractor negotiates for itself. It also negotiates for any other employer engaged in the project. In each case, it negotiates with the union:

- only when the union is the bargaining agent for its employees or the employees of the other employers engaged on the project; and
- only to the extent of the project. That is, it cannot negotiate for matters outside the scope of the project as defined in the regulation.

To achieve this, Section 199 defines which parties a carve-out collective agreement binds. They are:

- the principal contractor as principal contractor and as an employer engaged in the project;
- the employers (sub-contractors) for whom the principal contractor initially bargained;
- any other employer who becomes engaged in the project. Note an ambiguity in Section 198(d). It does not say “any other employer with a bargaining relationship with the trade union that is a bargaining agent for the employees on the project.” If a new employer is non-union, is that employer bound automatically to the agreement? Section 198(e) and (f) imply the employer is not bound, but (d) does not say so directly. In practice, this is unlikely to cause a problem if the principal contractor agrees only to hire union contractors;
- the trade union, to the extent it is bargaining agent for the employees working on the project; and
- the employees represented by the union, working on the job, and working for bound employers.

The agreement binds these parties by law. They do not need to sign the agreement. See: [[Section 199\(2\)](#)].

HOW CARVE OUT AGREEMENTS AFFECT OTHER AGREEMENTS

Once a carve-out agreement is in place for that project alone, that agreement excludes the parties bound by that agreement from:

- registration certificates and the effects of any registration certificate;
- any other collective agreement, whether registration or not; and
- any applications for registration.

If the employers and union have other bargaining relationships and collective agreements they continue to apply everywhere else. They just do not apply to the designated project. This means, for example, employees working under a site carve-out agreement would not vote on a proposal vote for a registration collective agreement.

The Board has not considered appropriate bargaining units for construction sites subject to a carve-out agreement. As bargaining takes place separately from registration, the Board might certify a site specific unit. Similarly, it might exclude employees on a designated major project from the scope of the normal “all construction [trade] employees” standard units. The Board has not decided this question. It will only arise once a designated project begins.

Employers may well voluntarily recognize a union only for a designated project. By doing so, they may avoid becoming bound to registration once the project is over. Registration only binds employers to the extent of their bargaining relationship and a voluntary recognition agreement may be limited. See: [[Section 176\(1\)\(b\)](#)]. The Board has recently addressed the distinction between section 176(1)(a) and (b) agreement in *CLAC Local 63 v. Transline Ltd and UA Local 488 et al.* The Board held a short term agreement providing for terms and conditions of employment for a fixed period of time, for a limited geographic area and for a defined type of work was a section 176(1)(b) agreement that expired on its terms and did not bind the employer to the terms of the registration agreement beyond the term of the short term agreement.