Construction - Managing Labour Risks

The SHR Approach for Project Owners

Executive Summary:

Labour relations represent one of the most significant, if not the greatest, risk faced by Australian construction project owners.

This reality is often exacerbated by a cavalier approach to the management of industrial relations based on the establishment of “the Agreement”. “The Agreement” is more often than not set up without any application of labour relations risk management principals and results in a series of “fire fighting actions” to minimise the resulting damage.

The SHR way, detailed below, is about “fire prevention” techniques and flies in the face of conventional labour relations practice. That is, dusting off the costs and arrangements from a comparable project and replicating all the same problems. SHR believes that is a definition of insanity – “always doing the same thing but expecting different and better results”.

The SHR way is based on sound strategies and systems to manage labour relations risk to best achieve the objectives set by the project owner.

Introduction:

Labour related risks on a construction project can take many forms. The most visible, and that which receives the most attention, is labour disputation in the form of strikes, stop work meetings and “manufactured” disputes.

But this is only the tip of the labour-related risk iceberg. There are a host of other factors that contribute to the make up of the labour relations risk iceberg, all of which contribute to low labour productivity, scheduled slippage, increased labour costs and delayed cash flow. These include:

- Poor selection of employees
- Low skill levels
- Restrictive work practices
- Poor work organisation
- Ineffective attendance management
- Poor logistics management
- Inaccurate payroll processes
- General lack of awareness of the past, present and future labour relations environment
- Shortage of appropriately skilled labour
- Inexperienced supervision and management
- Low standards of accommodation and facilities
- Restrictive employment agreements
- Lack of appreciation of reasonable and competitive labour costs

The conventional approach to labour relations project management is to build on the costs and arrangements on the last comparable project, develop a list of inflexible parameters for contractors and manage disputes by past practice and reaction. But what happens when it all goes wrong? Well, conventional wisdom would have you believe that the unions are to blame - they are not.
In SHR’s experience it is invariably the project and its contractors’ inability to manage labour relations proactively and flexibly that is the root cause. The challenge for project owners is to execute projects better.

The SHR Way:

SHR strongly believes that labour relations risk can be minimised by concentrating on five areas of activity:

- Pre-project planning;
- Understanding of the current and future project labour relations environment;
- A disciplined approach to contractor selection;
- A disciplined approach to contractor management; and
- A continuous improvement approach to the management of construction labour and construction effort.

SHR’s objective is to minimise “fire-fighting” in favour of “fire prevention”!

Feasibility/FEED Phase:

The SHR process begins at the feasibility study stage. This is where planning in the areas of labour availability, work organisation, labour cost, industrial relations strategy (including risk identification and mitigation) and contracting philosophy must be done. This forms some foundations on which effective project plans can be built for the securing of Board support and funding.

It is also important that the operating strategy is established at this stage and its effect on the construction plans identified. All too often, the construction phase is viewed as an activity that is distinct from the operations phase - it is not. Operations should not be forced to inherit a labour relations environment from a construction phase.

The objective of the construction phase is not the completion of a project. It is the handover of an efficiently operating facility that meets the designed level of production and cash flow. Armed with the contracting philosophy and labour relations strategy, the project owner is equipped to enter the phase of contractor pre qualification, tender request, tender evaluation and contract award.

FEED/Contractor Selection:

What underpins this phase is the analysis and understanding of labour relations data and proposals collected from potential contractors at the pre-qualification and tender phases. What information is collected will be affected by the contracting strategy and who contractually bears the risk of labour related costs and delays. At the pre-qualification stage the project owner requires information and data that allows the assessment of whether potential contractors currently have a labour relations approach that will complement the project’s contracting strategy.

At the tender stage the project owner seeks proposals from the tenderers that clearly demonstrate their ability to manage labour relations in an effective, project specific manner. The proposals must also demonstrate the tenderer's interest in exceeding the expected deliverables.
This requires the right questions to be asked in pre-qualification questionnaires and tender documents. It also requires the development of anticipated project contractual labour terms and conditions against which the tenderer can develop labour costings. The responses then need to be thoroughly assessed against the current and expected project labour relations environments. SHR has extensive experience in the preparation of these documents, the proposed labour costs, terms and conditions of employment, and the consequential assessment and evaluation of responses for projects throughout Australia, both onshore and offshore.

A vital technique in the assessment of tender submissions is an understanding of how the tenderer intends to manage its own labour relations activities and those of any subcontractors. SHR strongly believes that this is best demonstrated through the submission by each tenderer of a draft Employee Relations Management Plan (ERMP) as part of their tender. SHR has developed a number of proprietary tender ERMP content templates and has extensive experience in assessing these tools for various types of projects both onshore and offshore.

**Contract Award:**

The project owner then needs to assure itself that the preferred or selected contractors are prepared to, and are capable of, delivering what that have said in their tender submissions prior to finalisation and award of the contract. This can be achieved by negotiating an agreed ERMP, based on the draft, with the contractor that forms part of the contract conditions against which contractor performance will be measured.

**Contracting Strategies:**

It is fundamental to the overall success of the risk management approach to labour relations that there is strong compatibility between the contracting strategy and the labour relations strategy.

The labour relations provisions of the contract must complement the requirements of the tender and the project owner’s own approach to the management of labour relations on the project. These are captured in the contract both as general and special conditions, dependent on the nature of each contract. SHR has extensive experience in the development of these conditions.

Prior to any contractor commencing work on site, two vital areas of activity need to be undertaken – it must develop its own industrial relations risk register and negotiate the terms and conditions of employment. These activities must be aligned with the overall project industrial relations strategy. To maintain a common approach across the project, the project owner must maintain a close watch on these activities. This relationship must be established under contract conditions.

**Contractor Performance:**

Whether performed by the project owner or a project EPCM, monitoring of contractor labour relations activity must begin prior to mobilisation to ensure that competent labour is mobilised at the right time in a manner that has regard for the project as a whole.

The issue of contractor coordination in a manner that does not hinder each contractor performing in accordance with its contract is a vital activity. An integral aspect is the systematic audit of contractor performance to measure conformance to its ERMP. This coordination and monitoring must continue through to demobilisation, commissioning and hand over. SHR has the experience and resources to carry out this task.
The objective of all of this activity is to bring the project in on time and on budget through proactive planning prior to commencement in the field and proactive monitoring during construction. The clock cannot be turned back once a dispute has commenced. Once productivity has slipped it might be reversible, but it still represents a loss that can’t be regained.

**Construction Industrial Relations and Employee Relations Services**

1.0 Participate in and/or lead the development of detailed project industrial relations and employee relations strategies.

2.0 Participate in the development of the project contracting philosophy and strategy so as to ensure compatibility between the contracting approach and the industrial relations and employee relations approach.

3.0 Assist in delivering the project industrial relations and employee relations strategy and approach to contractors and sub-contractors so as to encourage a common understanding and approach.

4.0 Provision of labour costing services including notional gang rates and productivity and escalation calculations.

5.0 Check and comment on labour rates submitted by EPCM and contractors.

6.0 Act as owner’s representative on all industrial relations and employee relations issues encountered on the project.

7.0 Provide all project industrial relations and employee relations advice to the client.

8.0 Promote the use of “continuous improvement” tools at all levels on the project.

9.0 Prepare the project Employee Relations Management Plan (ERMP) that encompasses:
   - Project management structures; decision-making processes; and authorities for industrial relations and employee relations issues;
   - Project industrial relations and employee relations policy, objectives and philosophy;
   - Arrangements, roles and relationships between the project owner and nominated employer organisations;
   - EPCM and sub-contractor management including industrial relations and employee relations requirements of the EPCM and sub-contractors;
   - Preferred approaches to the form of industrial regulation used on the project;
   - A description of the contracting strategy and how it is linked to the ERMP so as to maximise its value to the contract;
   - The management of industrial disputation, including engagement/management/liaison of or with any legal services required;
   - Industrial relations and employee relations reporting requirements;
   - The management of union relationships on the project;
   - The interface with occupational health and safety;
   - The interface between construction, commissioning and operations phases of the project;
   - An assessment of labour availability and strategies to manage any labour shortages;
   - Community issues;
   - Mobilisation and demobilisation management;
   - Recruitment and selection standards;
   - Interface with other projects and other industrial relations and employee relations environments; and
   - Auditing of the industrial relations and employee relations effort.

10.0 Liaise with contract management, EPCM, contractors, employer organisations, unions, and others, as appropriate, to protect the project’s interests with regard to local content issues and outcomes.
11.0 Negotiate and manage the service contracts with the respective employer organisations for the provision of industrial relations and employee relations support to contractors for the life of the construction of the project.

12.0 Preparation of industrial relations and employee relations aspects of the contract documentation for the prequalification, tender and contract award phases.

13.0 Review and assess prequalification submissions from prospective bidders for contracts and participate in the tenderer selection process.

14.0 Establish the industrial relations and employee relations expectations and requirements of the successful contractors and sub-contractors for detail in contractor specific ERMPs, including:

- Purpose and objectives;
- Industrial relations and employee relations strategy and policy;
- Underlying industrial relations and employee relations philosophies;
- Industrial relations and employee relations management structure, decision making processes and authorities;
- Preparation of any necessary contingency plans for the management of industrial relations issues, including reference to Industrial Relations tribunals/courts;
- Best practice systems;
- Employer organisation and roles;
- Forms of industrial regulation and the mechanism for achieving them;
- Details of the remuneration, terms and conditions packages including hours of work;
- Sub-contractor industrial relations and employee relations management;
- Approach to accommodation;
- Recruitment, selection and mobilisation systems;
- Labour availability;
- Training and skills shortages initiatives;
- Issue resolution processes;
- Site facilities and amenities;
- Employee relations administrative systems (eg: performance management, discipline and termination, reporting, absence management, leave arrangements, security, inductions, etc.);
- Alcohol and drugs policy;
- Approach to local community issues;
- Management of traditional union roles;
- Interfacing with the external industrial relations and employee relations environment;
- Approach to industrial relations and employee relations considerations for offsite fabrication and deliveries to site;
- Vessel importation strategies; and
- Auditing

15.0 Participate in the industrial relations and employee relations aspects of bid clarification and assessment process for the contracts through to final selection.

16.0 Assist contractors to identify, recognise and address the impact of their mobilisation on the local community that in turn may influence local attitudes to the project (e.g.: local employment, aboriginal training and development, availability of accommodation, traffic, local industry, prices of goods and services, schools, etc.).

17.0 Establish training standards for the project.

18.0 Design the project strategy for employee communications including the continuous improvement initiatives.

19.0 Negotiate or overview negotiations with selected unions for a wages and allowances agreement for the project, if applicable.

20.0 Undertake that internal audit of owners ERMP.
21.0 Undertake the external audit of contractors and sub-contractors’ ERMPs.
22.0 Continually monitor the project industrial relations and employee relations activities.
23.0 Manage the Contractor and employer organisation activities to ensure a proactive approach to the project industrial relations and employee relations activities.
24.0 Monitor the management of union relationships on the project.
25.0 Provide and operate an employee relations monitoring system that confirms the skills and experience record of each employee proposed for mobilisation to the project.