

CONSTRUCTION LAW

Labor Relations

DO YOU UNDERSTAND LABOR ORGANIZATION AND WHAT UNIONS CAN OR CANNOT LEGALLY DO? BY KEVIN HUDSON AND MATTHEW SPIVEY

Unions are an integral and important part of the modern construction landscape. You don't need to be a project owner, general contractor or construction attorney to comprehend the impact they can have on a construction project. Instead, look at recent examples in major league sports and the resulting collective bargaining agreements. America's favorite pastime, baseball, provides at least two recent examples. One can recall the exploits of drug testing and televised congressional hearings, which were followed by negotiations between the player's union, Congress and Major League Baseball owners. The resulting agreement allowed for stiffer penalties and more open testing requirements, but still pales in comparison to other sports' policies on the same topic. Part of the reason for this is obviously the strength of the player's union in baseball.

An even better example of the power and impact unions can have on a construction project can be seen by comparing the baseball strike in the 1990s to what would happen if workers decided to strike or picket a project with a deadline. As in the baseball strike when there were no games for some time period, the end-user – whether it is a baseball fan, owner of a construction project or potential purchaser of a house – will not get what they paid for. It doesn't matter whether you like to see home runs or high-rises, the resultant discord and lost revenue for all parties involved demonstrates the need to know how to deal with employees who are a part of unions.

Regardless of whether you are pro-management or pro-union, everyone today realizes the importance of delivering a quality product and realize a profit. Although unions and labor law in



general contain many facets and complexity beyond the scope of this article, we simply wish to lay out the general law surrounding unions and union members' rights, as well as to look briefly at the concept and their possible effect on delivering a quality project.

The modern construction project is like trying to direct a symphony orchestra with 45 different people, all playing different instruments and reading from a different sheet of music. Those of us involved in construction today know there is no easy answer to the challenges presented by the modern construction project, but understanding the basics will hopefully at least allow everyone in the orchestra to be reading from the same music book.

Basic Framework

The National Labor Relations Act (NLRA), passed in 1935, provides

the basic framework for labor organization and what unions can or cannot legally do. However, the NLRA specifically excludes from its coverage individuals who are: employed as agricultural laborers; employed in the domestic service of any person or family in a home; employed by a parent or spouse; employed as an independent contractor; employed as a supervisor; employed by an employer subject to the Railway Labor Act, such as railroads and airlines; employed by federal, state, or local government; or employed by any other person who is not an employer as defined in the NLRA.

We must ask, what does the NLRA protect and prohibit? In general, employees have the right to join, support or assist unions to

bargain collectively with an employer on the employees' behalf seeking to modify wages or working conditions. Even outside of a union, employees have the right to engage in certain "protected concerted activities," which generally refer to a group of two or more people seeking to modify wages or working conditions. The NLRA forbids employers and unions from interfering with, restraining or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting unions or engaging in protected concerted activities.

In addition to the basic protections under the NLRA, the Labor-Management Reporting and Disclosure Act (LMRDA) also affects millions of people throughout the United States. This act covers unions, officers and employees of unions, union members, employees who work under collective bargaining agreements, employers and labor relations consultants. In general, the LMRDA provides certain rights and protections for union members, including, but not limited to:

- A bill of rights for union members;
- Reporting requirements for labor organizations, union officers and employees, employers, labor-relations consultants and surety companies;
- Standards for the regular election of union officers; and
- Safeguards for protecting labor organization funds and assets.

Knowing the Standards

What does this mean to general contractors, project owners and end-users of a construction project? An example relevant to construction and which is seen increasingly throughout the country relates to unions demanding better "area job standards." While there is no easy solution, knowing the likely move and motivation of each party will help construction professionals plan for and deal with these issues as they arise.

A typical fact pattern and the debate and dispute between the sides plays out on a daily basis and is increasingly the subject of litigation. Generally, a union will begin a campaign to improve job standards in work-hours or pay and will target a particular subcontractor on a job. This campaign will begin with a letter to the subcontractor telling them they intend to inform the public through different actions (such as picketing, hand-billing or displaying banners) that the subcontractor is not meeting area standards. In some cases, there will be a second letter or this letter will be copied to the general contractor and building owner or manager informing these third parties of the union's intentions

and asking them to use managerial discretion to not allow the subcontractor to perform any work on any of the projects until the subcontractor meets area standards. What area standards really means is up for debate, depending on which side of the aisle you sit, but this could mean paying union wages and benefits that may exceed the wages and benefits typical for the trade.

Deal With It

Regardless of your beliefs or whether you are an owner, general contractor or subcontractor, how you deal with these issues is im-

portant. From the perspective of the union, assuming no action was taken to improve area standards, they would then show up on the job site and picket the main entrance. By law, the signs they would use for such activity should only identify the primary subcontractor

they have a problem with and they may also distribute handbills.

From the perspective of the owner or general contractor, the least likely disruption can be obtained by designating a "separate gate" on the project for the subcontractor that has been determined to not meet area standards.

Another alternative would be to assign the identified subcontractor with different work hours that are less disruptive. In either case, the owner or general contractor should clearly identify the separate gate or different hours to the union, making it clear they are only allowed to picket at that separate gate or during the times when the subcontractor will be on the job.

Generally, unions are prohibited from taking action that results in threatening, coercing or retraining any neutral persons and the conduct's purpose is to force or require a person to cease doing business with any other person, or to force another employer to recognize and bargain with the union. Unions will argue that their conduct does not fall into these categories and is protected by First Amendment and publicity provision of the NLRA.

Whether you view unions as protecting important First Amendment rights and promoting fair labor standards or as an obstacle, the only certainty is that they must be understood and dealt with. Learning more about the NLRA and its related statutes, as well as receiving continued counseling from experienced professionals is a necessary evil in today's construction project. ■

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UNDER THE NLRA, EMPLOYEES HAVE THE RIGHT TO JOIN, SUPPORT OR ASSIST UNIONS TO BARGAIN COLLECTIVELY ON THEIR OWN BEHALF.