



# Bannering

Resource  
Guide





## OVERVIEW

Because you are a merit shop contractor, the pro-union forces are continuously looking for ways in which they can discredit and ruin the reputation of you and your company. This manual discusses and provides guidance on union "bannering," which is the union tactic of displaying a large banner disparaging an employer near a construction job site

The purpose of this manual is to introduce you to union bannering campaigns and help you to respond to them effectively. This manual provides you with resources for confronting union bannering, including best practices for talking to project owners, other customers, other business owners in your community and local media.

For the most update to date information on Big Labor's effort to disparage merit shop contractors and their customers through bannering, visit [www.shameonunionbanners.com](http://www.shameonunionbanners.com). This site provides information for project owners, videos and other information vital to stopping this union tactic

**The information and guidance provided in this book is NOT intended as legal advice, however. Neither should the information in this book be used as a substitute for seeking the advice of your legal counsel. It is important to understand that no two union-sponsored corporate campaigns situations will be exactly the same. In addition, the laws concerning what you can or cannot do at the time of an attack can change from time to time. Therefore, in the event your company becomes a target of union bannering or similar corporate campaign, ABC recommends that you contact your attorney and obtain their advice regarding your specific situation.**

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## Section 1: What is Bannering?

“Bannering” is a pressure tactic used by organized labor where individuals – often temporary hourly workers employed for this specific task, not union members – are hired to hold a large banner outside a business “shaming” either a construction project owner or construction-related firm for some kind of allegedly wrongdoing.

Bannering is usually part of a larger corporate campaign against a merit shop construction firm. A “corporate campaign” is a multifaceted attack on a company’s business relationships. It is a highly sophisticated form of warfare in which a target company is subjected to diverse attacks—from psychological to economic – with the attacks often aimed at the company’s customers or the general public. In the case of attacks on merit shop contractors in the construction industry, the ultimate goal is to pressure the company to give in to union demands for recognition, or to drive the contractor out of the market so that unionized competitors can increase their market share.

### How does Bannering Work: Big Labor’s Playbook

While no two corporate campaigns are the same, there is often a regular series of events that often leads to union bannering.

- A.** The union sends a targeted contractor a letter claiming – often with no supporting documentation – that employees working on a specific project or individual employer are paid substandard wages and benefits. The union demands that the targeted employer provide private employee payroll information to the union within specified number of days, or the union will presume that the employer is in fact paying substandard wages and benefits.
- B.** Next, the union sends letters to owners for whom, the targeted contractor has performed work claiming a labor dispute, despite the fact that no employees of the targeted firm are involved in the so-called dispute. The letters also claim that the entities requiring construction services do so using substandard construction firms and will be subject to demonstrations. Big Labor’s goal is to make ABC member firms appear inferior in order to pressure project owners into using signatory firms.
- C.** Finally, the union stages protests at either the construction owner’s property or the merit shop firm’s place of operation claiming a supposed labor dispute. These protests can typically include a large banner declaring “shame” on either the project owner or merit shop firm, hand billing and perhaps other street activity.

## Section 2: Bannering and the Law

- A. The National Labor Relations Board (NLRB) and the courts have so far declared stationary bannering *alone* to be usually legal, so long as the banners do not “create a confrontation.” See *United Brotherhood of Carpenters Local 1506 (Eliason & Knuth)* (NLRB 2010), and subsequent cases.
- B. The NLRB has yet to identify what it considers to be “confrontational bannering.” However, blocking of entrances, *non*-stationary banners, and activities that are more like traditional picketing may be subject to challenge (see below).
- C. Bannering often occurs *together* with *unlawful picketing* which *can* be successfully challenged on several grounds. Picketing (typically characterized by groups of people patrolling at or near an entrance, usually carrying signs, and otherwise acting in a confrontational manner) will generally be found unlawful under any of the following circumstances:
- Trespassing on private property
  - Blocking entrances
  - Mass demonstrations or similar disruptive conduct (such as using bullhorns in ways designed to disturb or offend neutral individuals)
  - "Secondary" picketing, i.e., coercing neutral customers/contractors (this includes picketing at an entrance “reserved” for neutrals)
  - Picketing with organizational intent for more than 30 days without filing an election petition.
  - Violence
- D. There are legal remedies available that can sometimes stop the above illegal union pressure tactics, regardless of whether a banner is present. These remedies include the following:
- Filing unfair labor practice charges against the unions at the NLRB (Sections 8(b)(1) and 8(b)(4) of the Act can be effective)
  - Demanding that the NLRB go to court to get an injunction against the unions (Section 10(l) requires the NLRB to give priority to unlawful picketing cases)
  - Filing a private lawsuit for damages in court for any lost work resulting from unlawful picketing (29 U.S.C. Sec. 187)
  - Filing a private lawsuit for damages resulting from defamatory statements, violence, and possible violations of federal racketeering laws (RICO).

## Legal Tips

- A.** Consult a labor attorney. Union bannering and related pressure tactics can be challenged under the laws, but only if the certain conditions are properly established. ABC chapters maintain relationships with experienced labor attorneys who are familiar with the legal ground rules.
- B.** Know your property rights and enforce no trespassing zones.
- C.** Notify the police when threats arise and consider increased private security.
- D.** Train on-site managers in the legal do's and don'ts of responding to union pressure tactics.
- E.** Among other assignments, on-site supervisors should notify senior management of confrontational activity, protect the work site, and document misconduct.
- F.** Consider whether special "reserved" entrances and/or work times should be created to limit picketing. While the NLRB has not found such responses to be effective against stationary banners, related union picketing *can* be restricted in most situations.
- G.** Be careful with cameras to avoid claims of unlawful surveillance of protected union activity. At the same time, video documentation of improper union conduct is permissible and often is vital.
- H.** Consider all legal options available. While the NLRB has recently allowed stationary banners to be posted by themselves, such banners are often associated with other forms of picketing or pressure tactics against construction users that have been declared to be *illegal*.
- I.** So even where a banner is present, it may be possible to challenge the totality of union conduct at the NLRB or in court. Expert legal advice is essential.
- J.** Litigation assistance may be available from the Construction Legal Rights Foundation. Contact an ABC chapter or the national office for more information about available legal resources.

## Section 3: First Steps for Contractors

This section is designed to give you some insights and tips to help you in preparing your initial reaction to the corporate campaign. It is important to understand that no two attacks are the same, but they often start with the union sending a notice to the employer stating that they may be paying below area standard wages and requesting information on the issue. There are a number of common sense rules that contractors should apply if they receive this type of notification.

- A. Don't overreact or engage in knee-jerk responses that could come back to hurt you:** One of early objectives of bannering campaigns – even before the banner is up – is to engage you in a dialogue which may distract you from your business obligations and shift your focus on trying to correct the inaccurate or misleading information that the union is planning to spread.
- B. Do not react to union threats in a rash or emotional manner.** That is precisely what the union wants you do in hope that you will make a mistake; for example by taking an action that could be considered an unfair labor practices by the National Labor Relations Board that could subject the targeted firm to legal sanctions.
- C. Contact your attorney as soon as possible:** This could save you money in the long run. The purpose for calling your attorney is merely to alert him/her that you are under the threat of union activity. It is critical that you identify what your next steps should be, including what actions should be taken on your own and what actions should involve your attorney, key staff and employees.
- D. Develop a strategic plan before responding:** The first thing to remember when your firm is the target of a bannering campaign is that you need to develop a well-thought strategic plan. The following are some recommended actions and issues to consider when developing your strategic plan, and some suggested actions you should probably include in your plan:
  - a. Brief your management team:** Explain what the union is attempting to do through their threatening letter and potential subsequent activity. The management team must understand the importance of implementing the firm's strategic plan for addressing the union threat and avoiding knee-jerk reactions in response to actions the union may take in the future, including bannering or other picketing. A well-briefed management team is also the firm's best resource for addressing employee concerns should union pressure escalate.
  - b. Brief your employees:** It is important that employees are briefed before the union displays a banner to answer any questions and address concerns that may arise from the union's claim that they are being paid substandard wages.
  - c. Allow your labor attorney review all correspondence from the union.**
  - d. If you decide to answer the union's initial letter in an attempt to avert the placement of a banner, determine the best response and who should prepare it.**

- e. **Contact your ABC chapter:** If your company is a target of bannering campaign or similar pressure tactic, ABC can help through educating project owners of the union's actual goal: promoting unionized construction at the expense of the vast majority of the workforce that chooses not to join a labor organization.

## After the Banner is up

There are a few common sense first steps to take once the union puts up the banner.

- A. **Consult your labor attorney.** This will help you determine any potential legal maneuvers that could be employed to compel the union to take down the banner immediately. This also includes potential union violations of local noise or trespassing laws. Additionally, an attorney can inform you on the best first steps based on the particulars of the union campaign
- B. **Educate your management team and employees.** The banner will likely be visible to company management and workers, so sharing information about the situation will be necessary and important. Key messages are do not react to the individuals manning the banner and the banner is a tactic used by organized labor to deprive merit shop workers of the opportunity to compete for projects.
- C. **Discuss the issue with the project owners.** This banner will also be highly visible to the owners of the project. They are likely to ask about how this banner and other union activity will impact the timeline project delivery, whether the union activities will garner negative attention in the community and if the contractor is actually treating their employees fairly. The contractor should remember that the project owners are often named on the banner, so it is important to their concerns.
- D. **Are public relations activities necessary and appropriate?** Union bannering efforts smear the good names of good project owners and merit shop firms working to complete their projects in a safe, economical and timely manner. Some owners and/or contractors may choose to stand up to the union claims through media and community outreach. While this approach does attract attention to the bannering campaign, local media campaigns have frequently been successful in exposing the true nature of Big Labor's effort.

## Section 4: Confronting Bannering through Public Relations

Union bannering campaigns often rely on misinformation for their success. These efforts are most effective when construction project owners and the general public do not ask the follow up questions about the union's claims.

While many project owners and contractors are hesitant to draw media attention to the union campaign and fear attracting attention to Labor's effort, bannering campaigns are frequently exposed as self-serving and deceitful under the glare of media attention.

There are several common sense tips for a successful public relations effort to confront union bannering.

- A. **Verify that union claims are inaccurate and prepare evidence.** Most bannering campaigns claim that a contractor is not paying area standard wages, i.e. union wage scale. While this may be true, most merit shop firms can demonstrate that they pay workers fair wages and other benefits. The contractor should be able to demonstrate that the union claim is false if asked to do so.
- B. **Determine how comfortable the project owners and/or project manager (general contractor) is with exposing Big Labor's intent through the media.** Project owners and higher tier contractors need to be aware and comfortable with the targeted contractor's outreach strategy. Outreach to the media will likely spotlight the bannering in hopes the media will expose the union's mischaracterizations. While media attention frequently yields positive results for the merit shop firm, this outcome is not guaranteed.
- C. **Contact the local ABC chapter.** ABC chapters are connected to a national network of best practices and other resources. Many ABC chapters also have staff members that are experienced in coordinating media and community outreach campaigns. These tools can help ensure that merit shop contractors execute efficient and effective campaigns.
- D. **Prepare media packets and other necessary materials in advance.** It can be helpful for targeted contractors to prepare media packets in advance. These packets should include a summary of events, the contractor's side of the story and other relevant information in an easily accessible format.
- E. **Save copies of all media hits.**

Associated Builders and Contractors  
Banner Resource Guide

Best Practices Resource Appendix

## **Section One: Outreach to Project Owners**

1. ABC National Sample Letter to General Contractor from Subcontractor
2. ABC National Sample Letter to Project Owner
3. Baskin Sample Letter to Project Owner
4. Arizona Sample Letter to Project Owner
5. Nevada Sample Letter to Project Owner
6. Cover Letter to Preserving Open Competition on Your Construction Projects Booklet
7. Preserving Open Competition on Your Construction Project Booklet, 2011 Update (Originally Created by the Western Washington Chapter)
8. ABC Western Washington Chapter: Guide to Owners of Construction Projects
9. ABC Nevada Chapter: A Guide for Construction Project Owners and Contractors

## **Section Two: Tools for Contractors**

1. Union Activity Incident Report Form
2. ABC Western Washington Chapter: Bannering Checklist

## **Section Three: Counter Banners**

1. "Shame on the Carpenters Union" Banner
2. "Thank you for Supporting" Banner

## **Section Four: Media Best Practices and Coverage**

1. New Mexico Media Packer
2. ABC Nevada "Thank you" Press Release
3. Tulsa, Oklahoma Advertisement
4. ABC Rocky Mountain Chapter Positive Ad
5. ABC Nevada Bannering Newsletter
6. Sample Statement from Contractor
7. New Mexico Media Coverage
8. *Washington Post*: Outsourcing the Picket Line (7/24/07)
9. *Wall Street Journal*: To Protest Hiring of Nonunion Help, Union Hires Nonunion Pickets (7/16/11)

## Section One: Outreach to Project Owners

Letterhead

November 28, 2011

Construction Firm

Attn:

Address 1

City, State, Zip

Salutation:

My name is Mike Bellaman. I am president and CEO of Associated Builders and Contractors (ABC), a national construction trade association that represents tens of thousands of construction and construction-related firms with more than two million employees.

It has come to our attention that the \_\_\_\_\_ Regional Council of Carpenters contacted you to protest the participation of a merit shop contractor and its employees on one of your upcoming construction projects.

ABC and its members recognize Construction Firm's right to utilize any subcontractor selection criteria it believes creates the most value for its clients. We also strongly believe there is inherent value in allowing all qualified contractors and their local workers to compete for project in their own communities in a fair and open manner. ABC's desire is that you will allow the free market to work and select subcontractors based on who provides the best value for your client.

Despite the union's claims in the letter, local councils of the carpenter's union do not use this tactic to raise area standards for skilled workers, but instead to intimidate construction project owners and persuade them to use contractors with exclusively union labor. ABC believes fair work deserves an honest wage, but our members take strong exception to the union's efforts to gain market share by intimidating construction owners, making false claims and engaging in public spectacles.

More than 83 percent of Kentucky's construction workforce chooses not to join a labor organization. As a result of this dwindling market share, some unions may be compelled to engage in extreme measures. We regret that the union may establish picket lines or banners as part of its campaign. These tactics are unnecessarily confrontational, distort the truth and denigrate the construction industry.

I personally spent 23 years in the construction industry prior to becoming ABC's CEO earlier this year. I welcome the opportunity at any time to discuss how the construction industry and ABC can create the highest level of value for your organization.

Thank you,

Letterhead

November 28, 2011

Owner

Attn:

Address

City, State, Zip

Salutation:

My name is Mike Bellaman. I am president and CEO of Associated Builders and Contractors (ABC), a national construction trade association that represents tens of thousands of construction and construction-related firms with more than two million employees.

It has come to our attention that the \_\_\_\_\_ Regional Council of Carpenters contacted you to protest the participation of a merit shop contractor and its employees on one of your upcoming construction projects.

ABC and its members recognize the general contractor's right to utilize any subcontractor selection criteria it believes creates the most value for its clients. We also strongly believe there is inherent value in allowing all qualified contractors and their local workers to compete for projects in their own communities in a fair and open manner. ABC's desire is that you will allow the free market to work and select subcontractors based on who provides the best value for Owner.

Despite the union's claims in the letter, local councils of the carpenter's union do not use this tactic to raise area standards for skilled workers, but instead to intimidate construction project owners and persuade them to use contractors with exclusively union labor. ABC believes fair work deserves an honest wage, but our members take strong exception to the union's efforts to gain market share by intimidating construction owners, making false claims and engaging in public spectacles.

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I personally spent 23 years in the construction industry prior to becoming ABC's CEO earlier this year. I welcome the opportunity to discuss how the construction industry and ABC can create the highest level of value for your organization.

Thank you,

To Our Customers:

Recently, your organization may have received a letter from the Mid-Atlantic Regional Council of Carpenters. The letter would have notified you that this union is engaged in a labor dispute with one of our subcontractors in the drywall trade. I am writing you personally to respond to the union's letter.

We believe that construction work should be performed on the basis of merit with fair treatment, good wages and benefits for all employees. We award subcontracts only to responsible contractors who share these views and who pay their employees fairly while performing high quality work for our clients.

The employees of our subcontractors are free at any time to join unions or to *refrain* from such support, in accordance with the National Labor Relations. Despite active union organizing efforts over the past several years, few if any of our subcontractors' employees have expressed any interest in bringing the union into their workplace.

Apparently because of this lack of success among the construction workers themselves, the union has resorted to pressure tactics, such as the threatening letter you may have received. The union letters make the disputed claim that our subcontractors do not pay prevailing wages or benefits. The simple fact is that if our subcontractors failed to pay the wages that prevail in this market then they would be unable to get enough workers to do their jobs, or else their workers would demand union representation. Neither of those things has happened.

Instead it is the union that has failed to pay prevailing wages, hiring and exploiting homeless people to man picket lines or hold up banners at minimum wages with no benefits at all. This union tactic has received national comment in major news publications, accusing the union of exploitive tactics and hypocrisy.

80% of all construction work in this area is performed on a non-union basis at wage rates at or below the rates paid by our subcontractors. If the Union succeeds in its efforts to intimidate construction users from using the most competitive, responsible subcontractors to work on their projects, the cost of construction will dramatically increase.

We regret that the union may establish picket lines or banners (usually manned by homeless people, not carpenters) as part of their campaign. We will respond to any improper union activity directed towards any of our customers.

If you have any concerns about any issue raised by the union's recent letter, please contact me personally. Meanwhile, our highly valued employees and those of our subcontractors will continue to perform the best quality work on your behalf.

Sincerely,



Sierra Nevada  
Chapter

April 22, 2009

Kathy Healy, President  
Healy Construction Services  
14000 Keeler Ave  
Crestwood, IL 60445

Dear Ms. Healy,

It has come to my attention that you received a letter from the Carpenters Union Local #971 in regards to Wisser Drywall, Inc. and the Saks Fifth Avenue project in Sparks, Nevada. They claim Wisser Drywall, Inc. does not pay prevailing wage or benefits to their employees.

It is important for you to know that these labor dispute allegations have not been substantiated with any supporting documentation. All of the Legends at the Sparks Marina projects, including the Saks Fifth Avenue, are subject to prevailing wage law. As a result, any contractor, union or not, must pay their employees the same published wage rate.

Prevailing wage law in Nevada does not require any contractor to provide mandated benefits. Wisser Drywall, Inc. is a valued ABC member and has not committed any prevailing wage violations on this project.

General contractors and project owners who have received these letters have responded to Local #971 requesting documentation to support their claims, with out any response. The response letter is attached for your consideration.

I have also included a brochure with more information as to what bannerling is and what options you have. I hope you will give me a call if you have any questions. ABC is here to support open competition and to ensure level playing field.

Sincerely,

Clara Andriola,  
President

-DRAFT-

Re: Union Allegation Against NKW

Dear Owner,

It has come to my attention that the Carpenters' Union has leveled numerous allegations against NKW, Inc. This form of attack is known as a "corporate campaign" in labor terms. The Union has been unable to successfully organize the employees of NKW or to intimidate the firm into signing a collective bargaining agreement. Therefore, the Union has now launched an attempt to discredit the firm with the general contractors and owners for which NKW works. It is truly sad that the Union must resort to threats and distortions to accomplish its goals.

In Arizona over 90 percent of the contractors and construction workers operate without collective bargaining agreements. This system is known as "Merit Shop." Contractors get work based on quality, price and experience. Employees get jobs based on many conditions. Their wages are set by factors in the marketplace that include availability, training, experience and productivity.

NKW has completed over \$(fill in the amount) million worth of projects in Arizona. Much of it is done for repeat customers. Some of those customers include (fill in the names). You don't get repeat business for those customers by performing shoddy or substandard work. Doing quality work requires quality employees who must be paid competitive wages and benefits or they seek employment elsewhere!

NKW offers a package of wages and benefits that attract quality trade workers, supervisors, support and administrative personnel. That package includes health insurance, group dental, disability, flexible spending accounts, a 401(K) retirement plan and paid holidays. (This last sentence needs to be confirmed)

***(I don't know if you want to get into the details of wages here or not..)***

As you can see, the facts paint a vastly different picture than the misinformation distributed by the Union. I hope this serves to set the facts straight. Rest assured that Joe Smith General Contracting continues to contract with subcontractors who provide the greatest level of skill and quality that owners expect in their project. (Say more nice things guaranteed to get you the next job.)

Sincerely,

Joe Smith

Letterhead

November 28, 2011

Owner  
Attn:  
Address  
City, State, Zip

Salutation:

It has come to our attention that the \_\_\_\_\_ Regional Council of Carpenters contacted you to protest the participation of a merit shop contractor and its employees on one of your upcoming construction projects. I am writing to express the concern of the Kentuckiana Chapter of Associated Builders and Contractors (ABC) and our \_\_ construction and construction-related member firms. Additionally, I have enclosed some resources explaining the union's intent in detail and offering some common-sense ways to respond.

The ABC Kentuckiana Chapter and its members recognize the owner's right to utilize any procurement criteria it believes creates the most value for the organization. We also strongly believe there is inherent value in allowing all qualified contractors and their local workers to compete for projects in their own communities. Our members believe fair and open competition, based on the merit of the contractor, results in the best construction project at the best price. This creates value for project owners and their surrounding communities alike.

Despite the union's claims in the letter, local councils of the carpenter's union do not protest to raise area standards for skilled workers, but instead to intimidate construction project owners and persuade them to use contractors with exclusively union labor. ABC believes fair work deserves an honest wage, but our members take strong exception to the union's efforts to gain market share by intimidating construction owners, making false claims and engaging in public spectacles.

More than 83 percent of Kentucky's construction workforce chooses not to join a labor organization. As a result of this dwindling market share, some unions may be compelled to engage in extreme measures. We regret that the union may establish picket lines or banners as part of its campaign. These tactics are unnecessarily confrontational, distort the truth and denigrate the construction industry.

The enclosed resources are designed to educate you on the union's tactic and provide some common-sense strategies to respond. ABC stands ready to assist our member and your organization to challenge any improper activity directed against its customers. If you have concerns about any issue raised by the union's recent letter, please contact me personally.

Sincerely,

Name

ASSOCIATED BUILDERS AND CONTRACTORS OF  
KENTUCKIANA

# **PRESERVING OPEN COMPETITION ON YOUR CONSTRUCTION PROJECT**

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*A GUIDE FOR CONSTRUCTION PROJECT OWNERS*

*November 2011*



One of ABC's goals is to provide labor relations information to the construction industry to keep industry members informed of their rights under the law. This information is not intended to substitute legal advice. Individuals are advised to seek legal assistance from appropriate counsel. The ABC office can refer you to a labor attorney if you do not already have one.

# OWNER'S GUIDE TO STAYING PROFITABLE

## ***You Have High Expectations for Your Project***

You are ready to build. You have construction and design professionals who have carefully considered budget, timetables and designs. You've invested significant resources in your project before you've even turned a shovel full of dirt. You penciled the project many times over and your ROI looks good.

Now, as your project is about to be awarded, you may be forced into a situation you had not anticipated. Union labor officials are demanding that you exclude an open shop contractor from competing on your project by claiming they are in a labor dispute.

## ***Why the Desperation to Eliminate Competitors?***

Unions claim open shop contractors rely on "substandard wages and benefits" in order to be competitive.

The truth is that competition for skilled workers in construction is fierce. If a contractor expects to be competitive, it must attract and keep the best workers. To do that, the contractor must provide a total wage and benefit package that is competitive in the region.

Open shop contractors have acquired 75 percent or more of the local market share because they are more efficient, productive and competitive.

Unlike their union counterparts, open shop workers are not bound by restrictive work rules and union hiring practices. In an open shop environment, workers are hired and promoted based on their skill and merit, not where they sit on a union hiring list.

Moreover, open shop workers are likely to be skilled in a variety of crafts, and perform a broad spectrum of duties every day. Accordingly, they are more efficient and productive, which can help your project be completed faster and more cost-efficiently, while maintaining the level of quality you expect and deserve. Open shop workers tend to stay employed more consistently throughout the year. As a result, their total annual wages meet or exceed those of union members. Open shop workers pay no union dues or assessments, which also helps them earn a bigger paycheck.

## ***Desperate Times, Desperate Tactics***

As the union's market share has continued to diminish, union leaders have attempted a number of tactics in an effort to reverse their freefall in the marketplace. The tactics don't involve increasing efficiencies or helping contractors become more competitive.

Instead, they attempt to coerce construction project owners into exclusively using unionized contractors. The tactics have little or nothing to do with a contractor's performance or ability, but focus instead on whether a contractor is signatory to a union.

**Seeking Increased Market Share by Eliminating Competition**

Union officials know their archaic work rules, hiring practices and culture hamstringing their signatory contractors. Because they cannot regain their market share through open and free competition, they are implementing tactics that they hope will eliminate the competition. These tactics include threats of bannering, hand billing, pickets and boycotts.

**Preserving Open Competition Reduces Construction Costs**

Your project, like the vast majority of construction projects in Kentucky, can best be completed using the most qualified and cost-effective contractors for the job, regardless of labor affiliation. Using only union signatory contractors, owners eliminate 84.3 percent of Kentucky’s private construction workforce.

**Merit Shop contractors** believe in union and open shop firms working side by side, free of interference, providing on-time, on-budget construction with safety, quality and cost-effectiveness as our goal.

The result? Higher costs and a lower ROI for you, the owner.

When owners practice competitive bidding and negotiating, all qualified contractors have an opportunity to win. As owners, you get the best quality at the best price.

**FACTS YOU SHOULD KNOW**

**Union Membership Nationwide Is Falling Dramatically**

U.S. Department of Labor, Bureau of Labor Statistics research shows membership in public and private sector unions is in serious decline throughout the country. Since 1983, when accurate statistics first became available, union membership in private and public sector unions fell from 20.1 percent of the workforce to 11.9 percent in 2010 – a 41 percent decrease. In fact, in 2010 union members represented just 6.9 of the private sector workforce.

Clearly, U.S. workers have a different view of unions then they did 30 years ago.

In the 1950s, more than 80 percent of the U.S. private construction workforce belonged to a union. By 2010, that number fell to 13.1 percent.

Even in states such as Kentucky, which has a mild tradition of unionization in the construction industry, union membership is waning. In 2010, only approximately 15 percent of construction workers belonged to a union.

**DEAILNG WITH UNION TACTICS**

This guide is intended to alert owners about the use of union tactics, their effects, and to suggest practical methods for dealing with them.

## ***A Common Theme***

Generally, the tactics being deployed by unions are intended to scare owners into thinking they will see mass protests that cast a negative light on the contractor and owner, garnering wide public support in favor of the union.

In fact, little happens or there is a backlash against the unions. For instance, in Washington, D.C., recent pickets and bannering protesting an owner's use of open shop contractors ultimately proved embarrassing for the union when the local news reported the people manning the pickets were actually not union members at all. They were temporary workers and homeless people exploited by the union and paid low wages with no benefits. Then, when the picketers became rude to passersby, news stories reporting the incidents cast the union in a negative light.

## ***The Unions Are Threatening an Information Campaign. What Can I Expect?***

Often it means two or three people will hold a large banner near your site, which catches very little public attention. The people holding the banners may be union members or, in some cases, are day workers that are being paid very little, offered no benefits, and often don't know what the dispute is about.

A union's right to banner is currently legal as a form of free speech. However, should the union's conduct go beyond lawful, peaceful bannering, it may be unlawful.

## ***Suggestions for Dealing with Union Bannering***

- **Keep an eye on it.** While bannering may be lawful, blocking the access or egress of the public or workers is not. The banner should not disrupt traffic flow, present public safety issues due to decreased sight lines or redirect foot traffic, or intimidate the public. If it does, police should be called to address any hazards to the public.
- **See if it is accompanied by picketing.** If so, it is subject to the rules regarding timing and placement of pickets. For example, those with the banner can only be there when the targeted company is present and must abide by a dual gate system (if one is established on the project).
- **Be prepared to advise the public.** Create a leaflet of your own or some other method explaining the union's dispute is actually with an open shop contractor on the project and not regarding anything you've done, other than hire the most cost-effective, reputable contractor you can (whether they're union or open shop).

## ***I Have Received Threats of Union Hand Billing on My Job. What Can I Expect?***

Hand billing, or leafleting, is distributing union materials at a jobsite. Our experience is the vast majority of these efforts involve a small number of union officials, or their temporary workers, peacefully distributing their materials.

A union's right to handbill is very broad because hand billing is a part of free speech. However, should the union's conduct go beyond lawful, peaceful hand billing, it may no longer be unlawful.

In order for hand billing to be lawful, it must first be truthful. Hand billing is considered truthful if it does

not substantially depart from fact and is not intended to deceive. Second, the hand billing may lose its protected status if it is combined with patrolling, picketing or violence.

### ***Suggestions for Dealing with Union Hand Billing***

- In some situations, it may make sense to totally ignore the union activity. Otherwise, controversy gives the press something to report (see: Dealing with the Media).
- Portray to customers that it is "business as usual." Place large wastebaskets in easy-to-find locations for customers to conveniently dispose of union hand bills.
- If you are retail oriented, offer "labor day" discounts to union members after construction is completed. For the general public during construction, use the union literature as a coupon toward your product.
- Have your employees "mirror" or "counter" the union activity with a similar activity containing a positive message. For example, pass out literature from the establishment with "pardon our dust" or grand opening/expansion news.

### ***The Union Is Threatening to Boycott Our Business. Are Boycotts Effective?***

Bogus responses to a call for a boycott are often fabricated by agents of the union rather than the public at large. This can give the owner the false impression that the general public is sympathetic to the boycott. The public is generally not sympathetic to calls for consumer boycotts. Their buying decisions are driven more by price, convenience and quality of service. Boycotts are generally of limited effectiveness and short duration.

### ***The Union Has Threatened to Picket My Job. What Can I Expect?***

**ABC provides**  
member firms with the  
technical advice  
needed to limit the  
negative effects of  
pickets.

Rarely do threats of mass protests actually materialize. More often, picketing involves a handful of people peacefully carrying signs. When properly handled, a picket provides little need for concern. A competent general contractor can keep the project on schedule. The "Dealing with the Media" tips contained in this publication can help savvy owners deal with any public relations issues that may arise from pickets.

### ***Will a Picket Delay My Job?***

No. Unions have the right to picket contractors with whom they have a labor dispute. However, "secondary" picketing is picketing aimed at "neutral" employers, including customers and subcontractors, and is generally prohibited by the National Labor Relations Act. However, bannering is treated differently than picketing under the law and, as stated above, is currently legal.

The NLRB has established a legal doctrine designed to prevent secondary picketing against neutral contractors on a common worksite, known as the "reserved gate" doctrine. Under this doctrine, the NLRB requires that picket signs must truthfully state against whom any picketing is being conducted. Picketing must be done only at times the target firm is engaged in work at the jobsite.

### ***The Union Claims Open Shop Contractors Pay Less Than Area Standard Wages. Is This True?***

No. Open shop contractors are competing for qualified workers in a highly competitive market and cannot keep their skilled workers if they don't pay equal to or better than the unions. Some employees make more than union scale and some make less, based on their skill level and individual performance. Many union leaders contend that every tradesperson should make the same amount regardless of skill level. This is contrary to the merit shop philosophy, in which individuals are compensated based on their skill level, experience and productivity.

You might also hear union officials' unsubstantiated claims that a contractor does not pay "area standards" for wages and benefits. What they really mean is a contractor does not pay the union contract rate, which may or may not be true.

### ***The Union Claims Open Shop Contractors Are Unsafe and Poorly Trained. Is This True?***

No. Union companies are not safer than nonunion companies. Safety records are not determined by labor affiliation; they are determined by a company's commitment to safety.

A study by Charles Culver, former director of OSHA's Office of Construction and Engineering, found that during a nine-year period, fatality rates for open shop contractors were significantly (20 percent to 57 percent) lower than the fatality rates for union contractors. In general, quality of work and jobsite safety depends on the worker's individual knowledge and ability to perform.

## **DEALING WITH THE MEDIA**

Effective media relations can take potentially negative publicity and turn it into positive marketing. You should designate a trained spokesperson from your company to handle media inquiries. Use the following tips to help formulate your response.

- **Keep comments brief and concise.** Avoid lengthy responses that attempt to explain your position. Simply state your position. A reporter is never going to criticize you for giving short answers.
- **Stick with the facts.** Report the truth and don't get dragged into a "he said/she said" argument. You can answer by saying "I can tell you ..." and answer the reporter with the facts.
- **Develop your key messages.** Many of these issues are complex, so it helps to boil your messages down to key talking points. Keep them simple and limited to five or fewer messages that are important to you.
- **Use notes.** There is nothing wrong with having some talking points on paper to fall back on, but try not to read directly from them.

- **Try to relax as if you are talking with a friend.** Remember that everyone gets nervous with the media and you'll do better if you ignore the nervousness and just concentrate on the questions being asked. Most interviewees worry about how they sound. If you stumble a little on an answer, start over.
- **Rephrase questions that don't make sense or mislead.** In order to make your points clearly, rephrase questions so that when you answer you get your message across. Don't be afraid to go back to your key messages when asked different questions. You might say: "As I stated previously..."
- **Never say "no comment."** A refusal to comment implies you are hiding something. If you don't know or choose not to answer a question, simply say, "I can't answer that."
- **Avoid making negative statements about the union.** Instead, positively say what steps were taken to assure fairness and equity in selecting contractors. The positive impact of those steps is lost if you add negative comments about unions. This distracts the focus and makes it into a union vs. nonunion situation in which many people don't want to get involved. Remember, open shop contractors are not anti-union; they are free to choose labor affiliation.
- **Carefully describe the specific actions taken by the owner and the open shop contractor(s).** Explaining how you acted fairly, in a moral manner and in a manner consistent with the general welfare of the public is more effective than making general philosophical statements.
- **Control the interview environment.** Interviewees should pick the time and location to speak with the press, preferable away from the jobsite and away from an office.

### **Sample Media Statements from Construction Project Owners**

*"The corporate policy of (the name of the owner) is to obtain at least three bids for all components of the project and award the contracts to the lowest qualified bidders. About \_\_\_% of this project went to union contractors."*

*"Whether a contractor or its employees are union or open shop is not a factor we consider. (The name of the owner) believes the decision of a contractor or its employees to be union or open shop is a matter of personal freedom and choice that is neither our business nor our concern."*

*"(Name of owner) gave all qualified contractors a chance to make a well-considered bid and we question the unions' objection to a fair and open bidding process."*

*"As you may know, (name of project) is being bannered by (name of union) because an open shop construction firm was awarded a contract to work on this project. (Name of owner) selects qualified firms to meet our needs regardless of their labor affiliation."*

*"It should be noted that while (Name of owner) is being criticized for using an open shop general contractor, this general contractor hired (number) union subcontractors to do a large portion of the work on this job."*

*"(Name of owner) simply will not discriminate against employees who do not want to belong to a union. They deserve the right to choose."*

*"It is important that the management of (name of owner) select firms responsibly for the benefit of all our clients/customers. We believe we have done that."*

### **Who Is Associated Builders and Contractors?**

Associated Builders and Contractors (ABC) is a national trade association for the construction industry that actively promotes merit shop construction. ABC's goal is to help members win work safely, ethically and profitably. From a modest start by six Baltimore contractors in 1950, ABC has enjoyed a growing membership, now totaling more than 23,000 member companies nationally, each dedicated to the principles of free enterprise. These beliefs translate into a healthy, competitive and professional climate, the results of which are proudly reflected in ABC members' accomplishments.

ABC is one of the fastest growing construction trade associations in the country because it supports the sound merit shop philosophy at the heart of the free enterprise system. The merit shop is a force for the economy and efficiency in construction, regardless of organizational affiliation. The merit shop values union and open shop firms working side by side, free of interference, providing on-time, on-budget construction with safety, quality and cost-effectiveness as our goal. ABC's pursuit of free enterprise in construction has set the standard for other associations to follow.

Throughout the country, ABC is an effective force in business development, education, safety, labor relations, and industry legislation. ABC is comprised of general contractors, specialty contractors, material suppliers and industry professionals who believe in the merit shop construction philosophy.

ABC provides this information to prepare you should your business be targeted by the union's bannering campaign. We hope that as business owners you will consider the potentially costly consequences of submitting to union demands.

We are happy to talk with you and provide more information should you wish. Please contact:

**Aran Buchan, director of government affairs**  
[aran@abcwestwa.org](mailto:aran@abcwestwa.org)

ABC of Western Washington advances the principles of free enterprise and merit in the construction industry and provides members and their employees with opportunities to succeed by promoting safe, quality, sustainable construction.



## A Guide for Owners of Construction Projects

## Who is Associated Builders & Contractors?

Associated Builders and Contractors (ABC) is a 24,000 member national trade association for the construction industry which actively promotes merit shop construction, which we believe produces the best projects for owners.

ABC of Western Washington represents more than 500 companies and their employees from both open shop and union contractors, professional service firms and suppliers. Its membership includes general and subcontractors as well as associated firms that are dedicated to promoting the free enterprise system through improved business conditions, increased training and safety and promoting positive employee/ employer relations.

**425.646.8000**  
**800.640.7789**

**We're ABC.**

**We're working for you.**



## Developed by Associated Builders and Contractors of Western Washington



Western Washington

**800.640.7789**  
[www.abcwestwa.org](http://www.abcwestwa.org)

## The Issue

### The Issue

Members of Associated Builders & Contractors of Western Washington are being targeted by unions, particularly the Northwest Regional Council of Carpenters. Because unions have been unsuccessful in organizing open shop employees and employers, the unions have chosen to go directly to owners to manipulate their choice of contractors. The carpenters' union bannering campaign claims that open shop contractors don't pay "area standard wages" or accuses them of being "federal law breakers." The claims have no merit and are designed to eliminate competition and recover work for union workers.

Our goal is to educate owners about the tactics being used, clarify owners' rights and offer suggestions on how to deal with this current activity. If the union campaign is successful, and open shop contractors are forced out of business, your construction costs will increase.

## The Facts

### The Facts

1. The area standard wages dispute is untrue – open shop workers are paid as well if not better than union workers. If they weren't, they would join the union.
2. Bannering is just the most recent attempt to discredit open shop contractors.
3. Union membership has been declining for decades.
4. Unions are desperate to gain market share and membership.
5. If you give in to this tactic, your costs will increase.

*Banners like this one are a tactic being used by the carpenters' union to try to control the contractors you hire.*



## Union Tactics & Suggestions for Dealing with Them

### The Tactics

1. The union sends letters to construction project owners stating that they are in a "labor dispute" with an open shop contractor and asking that the owner use its "managerial discretion" to rectify the situation.
2. If the owner continues to work with the contractor, the union threatens it may begin an "aggressive and highly visible information campaign that can include banners, hand billing, picketing and demonstrations."
3. Banners saying things like, "Labor Dispute, (Owner's Name) Hurts Our Community" may be displayed at any of the owners' facilities.
4. The union may also ask that the owner sign a letter saying it will not work with the contractor again until the alleged labor dispute is resolved.
5. While bannering is currently legal, it is illegal for the people holding the banners to trespass on private property or to block access or egress to a business.

### Owner Recourse

1. Contact your contractor immediately if you receive a letter or if bannering begins at any of your facilities.
2. Get copies of leaflets and document the banners and activity with photos.
3. If union representatives trespass on private property, or if the activity impedes your access or egress or becomes a public nuisance, call the police to handle the situation.
4. If you wish, your contractor can distribute leaflets at your properties explaining this union tactic.
5. In one case, an owner sent letters to its customers and shareholders and the response was outstanding. The owner got overwhelming support for its choice of an open shop contractor.

## THE ISSUE

Business owners working with ABC members, who have chosen to be merit shop contractors, are being targeted by Unions, particularly by the Carpenters Union.

Because Unions have been unsuccessful in organizing merit shop construction employees and employers, the Unions have chosen to go directly to the owners and manipulate their choice of contractors.

The Carpenters Union bannering campaign claims merit contractors don't pay "area standard wages" and accuses them of breaking the law.

Their claims are not based on fact and are designed to eliminate competition and recover work for Union members.

Our goal is to educate owners about the tactics being used, clarify owners' rights and offer suggestions on how to deal with this current activity.

If the Union campaign is successful, and merit contractors are forced out of business, your construction costs are likely to increase.

## WHO IS ABC?

ABC provides this information in order to prepare you should your business be targeted by the Union's bannering campaign.

We hope that as business owners you will consider the potentially costly consequences of submitting to Union demands.

ABC is a national organization that advances the principles of free enterprise and merit in the construction industry.

ABC provides members and their employees with opportunities to succeed by promoting safe, quality, and sustainable construction.

We are happy to speak with you to provide more information by helping you to better understand your rights.

**ABC Sierra Nevada Chapter**  
**240 S. Rock Blvd., Suite 121**  
**Reno, NV 89502**  
**775.358.7888**

Clara Andriola, *President*  
Megan Jackson, *Government Affairs Liaison*

## BANNERING

### A Guide for Construction Project Owners & Contractors

*developed by*

**Associated Builders  
& Contractors**  
Sierra Nevada Chapter



**LABOR DISPUTE**  
**SHAME ON**  
**LABOR DISPUTE**  
**Your Company Name Here**

## OWNER RECOURSE

1. Immediately contact your contractor and ABC when you receive a letter or if bannering begins at any of your facilities.
2. Get copies of leaflets and document the banners and activity with photos.
3. If Union representatives trespass on private property, or if the activity impedes your access or egress or becomes a public nuisance, call the police to handle the situation.
4. If you wish, your contractor can distribute leaflets at your properties explaining this Union tactic.
5. In one case, an owner met with customers and stakeholders and the response was outstanding. The owner received overwhelming support for their choice of an ABC member who is a merit contractor.
6. ABC can help you explore filing a charge with the National Labor Relations Board.

## THE FACTS

- ⊕ The area standard wages dispute is untrue—merit workers are paid as well, if not better than union workers. If they weren't, they would join the Union.
- ⊕ Bannering is just the most recent attempt to discredit open shop contractors.
- ⊕ Union membership has been declining for decades.
- ⊕ Unions are desperate to gain market share and membership.
- ⊕ If you give in to this tactic your costs are likely to increase, due to less competition.
- ⊕ The Carpenters Union local #971 allows a reduced wage to be paid for "Light Commercial Projects (under \$7 million)." This wage appears to be \$4 to \$5 per hour less than prevailing wage.
- ⊕ Several companies have mailed letters to the Carpenters Union requesting documentation to support their labor dispute allegations without any reply.

ABC's commitment is to ensure a level playing field of open competition by preserving free enterprise for the entire construction industry

## THE TACTICS

1. The Union sends letters to construction project owners and other parties stating they are in a "labor dispute" with a merit contractor requesting that the owner use its "managerial discretion" to rectify the situation.
2. If the owner continues to work with the contractor, the Union threatens it may begin an "aggressive and highly visible lawful bannering display, distribution of handbills...picketing and demonstration activity."
3. Banners say things like, "Labor Dispute, Shame on (Owner's Name)" may be displayed at any of the owners' facilities.
4. The Union may also ask that the owner sign a letter saying it will not work with the contractor again until the alleged labor dispute is resolved.
5. The NLRB has yet to make a decision about the legality of bannering; however, it is illegal for the people holding the banners to trespass on private property or to block access or egress to a business.

*"Our employees choose to work with us..."*

*we value them by offering competitive wages & benefits"*

*Ron Kelly, Owner Gore Acoustics & Drywall Systems*

**Thank You**

**YOUR COMPANY**

**NAME HERE**

**FOR SUPPORTING**

**100'S OF FAMILIES IN OUR COMMUNITY**

**Thank You**

*Thank You For Supporting Our Community Banner*

## Section Two: Tools for Contractors

UNION INCIDENT REPORT

DATE \_\_\_\_\_

TIME \_\_\_\_\_

LOCATION OF PICKETS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXACT LANGUAGE ON PICKET SIGNS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ANY RELATED THREATS OR COERCIVE ACTIVITY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAMES OF WITNESSES

\_\_\_\_\_  
\_\_\_\_\_

INCIDENT REPORT FILED BY: \_\_\_\_\_



Western Washington

## Associated Builders and Contractors of Western Washington

### Bannering Checklist

#### **Avoid Media Exposure**

- The issue has been contained as much as possible
- If exposure is unavoidable, know key points to make
- Have a knowledgeable spokesperson designated
- Refer reporter to ABC for additional background information

#### **Make sure your house is in order. Policy check:**

- Safety policies
- Wage & hour compliance (overtime, breaks, beginning/ending of the day)
- Minority hiring
- Paying competitive wages
- Offering competitive retirement and benefit packages
- Community service and involvement

#### **Make sure employees support you and your company:**

- Employees educated on positive aspects of your company
- Employees trained to be “spokespeople” for your company
- Morale is high (company events, bonuses, etc.)
- Utilize other community groups when to speak on your behalf when possible (such as a chamber of commerce)

#### **Take responsibility for the problem:**

- Show that you, as the contractor, are handling the problem
- Provide owners with the necessary information so they understand the issue
- Inform owners that you are a good employer and pay competitive wages
- Think ahead – contact suppliers (such as UPS) that it's not a picket and they can still make deliveries
- Emphasize that the owner is not alone – others have been targeted

#### **Inform Owners: Pacific Northwest Regional Council of Carpenters is a rogue union**

- Stress that they are not affiliated with the AFL-CIO
- They stretch the boundaries of what's legal and what isn't
- They have had many charges filed against them by the NLRB

#### **Make things difficult for the union:**

- Call the police or sheriff's dept. when appropriate
- File your own NLRB charges when appropriate
- Stay aggressive with your own responses

## **2. SECONDARY PICKETING AND RESERVED GATES**

Unions have the right to picket contractors with whom they have a labor dispute. However, “secondary” picketing is picketing aimed at “neutral” employers, including customers and subcontractors, and is generally prohibited by the Labor Management Relations Act. The NLRB has established a legal doctrine designed to prevent secondary picketing against neutral contractors on a common work site, known as the “reserved gate” doctrine. Under this doctrine, the NLRB requires that picket signs must note truthfully against whom any picketing is being conducted. Picketing must be done only at times that the target firm is engaged in work at the jobsite. Finally, the picketing must be done as closely as possible to the area in which the target firm is working. Under these principles, picketing at entrances reserved for neutral employers is subject to injunction.

To make appropriate use of the NLRB’s reserved gate policy, whenever picketing is anticipated, it is recommended that reserved entrances be established by the owner of the property or the person with control over the use of the property, or a neutral in the labor controversy.

Reserved entrances must be clearly separated and must be the only entrances used to enter or leave the project. Block off all unmarked entrances. The entrances must be clearly marked so that anyone approaching the project or place of business will know which entrance to use. Place entrance numbers on the backs of the sign so that people leaving the area will also be able to identify the entrances.

1. The entrance which employees of the primary or targeted employer (including all members or management) and suppliers use to enter and leave the project or place of business should be posted with a sign which states:

### **GATE ONE**

This entrance is reserved for the exclusive use of employees, business visitors and suppliers of

### **PICKETED EMPLOYER**

All other persons must use Gate Two. These restrictions are strictly enforced.

2(a). The entrance which all other persons are to use to enter and leave the project or place of business should be posted with a sign which states:

**GATE TWO**

This entrance is reserved for the exclusive use of employees, business visitors and supplier of

**NEUTRAL EMPLOYER 1**  
**NEUTRAL EMPLOYER 2**  
**NEUTRAL**  
**EMPLOYER 3**

All employees, business visitors and supplier of PICKETED EMPLOYER must utilize Gate One. These restrictions are strictly enforced.

2b). **Alternatively**, the GATE TWO sign can be worded in the negative, so as to avoid identifying the neutral contractors, as follows:

**GATE TWO**

This entrance may **not** be used by

**PICKETED PRIMARY EMPLOYER**

and its employees. This entrance is reserved for the exclusive use of employees and suppliers of Neutral Employers.

The signs should be on 3' x 4' exterior plywood (or similar material) with a white background and black lettering of one inch. There is no limit to the number of entrances you may establish, provided each is properly marked. It is of critical importance that these entrances not be misused once they are established. The entrances must be observed by members of management as well as all other employees.

The final step in making the reserved entrances effective is to contact the union, describe the reserved entrance system to them and assure the union that your employees and suppliers will only use Entrance No. 1 (or whichever entrance or entrances which you are entitled to use). This contact should be in writing with a return receipt requested so it will be easier to prove should litigation be necessary. If the union fails to

adhere to the reserved gate system, an unfair labor practice charge should be filed with the NLRB, together with a request for an injunction.<sup>1</sup>

### 3. OTHER FORMS OF UNION PROTESTS

Different rules may apply when a union engages in non-coercive “handbilling,” as opposed to picketing. In *DeBartolo v. Building Trades* (1988), the Supreme Court held that unions have greater rights to inform the public of their views about an employer when no coercive picketing is involved. However, false statements or flyers by union agents may be actionable in court under state defamation laws, if the statements are made with knowledge of falsity, are defamatory in nature, and result in special damage to the employer.

The Supreme Court has held in the case of *Lechmere v. NLRB* (1992), that employers’ property rights are generally given priority over union demands of access to inform the public of its views, via picketing *or* handbilling. Proper posting and enforcement of no trespassing policies are important to preserving fundamental property rights on construction sites. Employers should obtain legal counsel wherever a question arises about union claims of access to private property.

Recent cases at the NLRB have raised the question of whether large banners stationed by unions at neutral employer entrances constitute protected free speech or unprotected secondary picketing. Other cases have addressed whether union noisemakers (amplifiers, etc.) are lawful under both the NLRA and local ordinances. Legal counsel should be consulted with regard to the legality of particular union tactics under the latest case law.

### 4. VIOLENCE AND MASS PICKETING

Sometimes unions will resort to violence or mass picketing in order to try to keep merit shop contractors from working. When such acts occur, the contractor should be advised to seek emergency relief in a state court. All state courts have the power to issue injunctions to maintain public order and safety.

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<sup>1</sup> Even where a union is engaged in picketing or similar activity at an appropriate entrance, there are other legal ground rules which may come into. First, the NLRB has held under Section 8(b) (7) of the Act that unions cannot engage in “organizational” picketing for more than 30 days without filing an election petition. To evade this rule, unions frequently direct their picketing towards an employer’s alleged failure to that such “informational” picketing is really intended to organize the employers’ workers and on injunction can be requested from the NLRB.

Some state courts are more helpful than others and some states have passed laws restricting the use of injunctions in labor disputes. It may be necessary to show that the police are incapable or unwilling to restore order, or that mediation has been attempted, or that other requirements have been met. The chapter attorney should be familiar with the procedures for obtaining state (or sometimes) federal relief.

It is also important that merit shop contractors assist the construction user in obtaining necessary police support and state or federal court injunctive relief, by doing the following:

1. Notify responsible local police officials that picketing is or soon will be expected. Request police protection.
2. Maintain a detailed log of all events on the picket line, including eyewitness account, photographs and/or videotape.
3. Fax the international union to inform them that they will be held responsible for any violence or damage committed by local representatives.
4. Consult labor counsel as to the appropriate time for filing a court action seek injunctive relief against union violence. Do not merely rely on the construction user to deal with the courts.
5. Consult labor counsel as to whether civil damages can be sought under recent court decisions applying the Racketeering Influenced Corrupt Organizations Act (RICO) to union violence and extortion.

## 5. PICKET LINE CHECKLIST

The following steps should be considered by any contractor who is confronted by picketing or handbilling. Jobsite managers should be made aware of these points in advance of any protests, so that they will know how to respond:

### a. **Enforce No-Trespassing Policies (Know Your Property Rights)**

Under settled law, outside union agents have no right to solicit employees or residents on private property, so long as management has not permitted other solicitors to engage in such on-site activities. Non-discriminatory enforcement is key. Any union agents who enter a property unlawfully should be asked to leave. If they refuse, the police should be called. Management should not attempt to physically restrain anyone. Standard security procedures should be followed.

Be sure to learn the limits and extent of the property lines of any jobsite's private property, and know who is responsible (owner, general contractor, or subcontractor) for enforcing property rights. Be familiar with any conflicting contractual requirements. Have the police numbers available and make contact with local law enforcement in advance if possible to familiarize them with the situation and ensure quick response.

### b. **Maintain Incident Reports/Logs**

When union activities occur, make notes of what happens (how many union agents, what they did, what their signs or fliers said, where they were located, when the activity occurred, their impact on residents or neutrals entering facilities, potential witnesses, any arrests).

### c. **Notify Corporate Management Immediately of Any Union Activity.**

Except in emergency or self defense situations, contact senior management as soon as possible upon seeing that union activity is starting. This is important not only to help each manager determine the best immediate response to union activity, but also so that senior management can build a case for a possible legal challenge to potentially unlawful union activity.

**d. Be Careful With Cameras**

Have a digital camera or video camera available to film potentially unlawful or disruptive union conduct. However, do not film peaceful distribution of handbills or non-disruptive picketing off of private property. (Labor law prohibits surveillance of lawful union organizing activity). Do film any acts of trespass on private property, any mass demonstrations, any picketing that results in coercion or intimidation of residents or potential customers. For your own safety, do not get close to the picket line (or in it) with the camera. Film in an unobtrusive manner.

**e. Notify the Police and Consider Increased Security**

Depending on the scope of union activity at a particular facility and the police response, additional security arrangements should be considered for the protection of residents and property against vandalism and/or intimidation.

**f. Consider Special Entrances for Construction Contractor Employees.**

Where unions engage in picketing (patrolling entrances, usually carrying signs or banners), labor laws require the pickets to be limited to locations where the "primary" employer is located or enters a facility. Where multiple employers are present, the law permits separate entrances to be established so that pickets can be limited to the entrance being used by the primary employer with whom the dispute exists. Depending on the facility being picketed, separate entrances should be considered, in consultation with legal counsel, as a means of limiting the location of the pickets and keeping them away from neutral residents or employers.

**g. Do Not Threaten or Harass Pickets**

Except where they engage in trespass, there is normally no reason to engage in dialogue with pickets or handbillers. Certainly there should be no "shouting matches." Trespassers should be told firmly to leave the property, and if they refuse the police should be called. It may also be advisable to obtain some form of identification from anyone who appears to be "in charge" of picketers or demonstrators. Otherwise, there is normally no need to communicate with union agents.

## Section Three: Counter Banners

# SHAME ON WHO?

THE PERSONS HOLDING  
THESE SIGNS ARE

# NOT...

- MEMBERS OF THE CARPENTERS UNION.
- STRIKING EMPLOYEES OF GRAYHAWK.
- EMPLOYED BY GRAYHAWK.
- BEING PAID UNION SCALE.

SHAME, SHAME, SHAME,  
ON THE CARPENTERS UNION  
FOR EXPLOITING THESE INDIVIDUALS!  
(SHAME ON THESE PEOPLE FOR LETTING THEM GET AWAY WITH IT.)

**Thank You**

**FOR SUPPORTING**

**CREEKSIDE CROSSING  
GORE ACCOUSTICS**

**100'S OF FAMILIES IN OUR COMMUNITY**

**Thank You**

**Thank You**

**Thank You**

## Section Four: Media Best Practices and Coverage

## ABC Union “Bannering” Talking Points

- ABC New Mexico believes in the merit shop philosophy, which dictates that construction projects should be awarded to the lowest responsible bidder, based solely on merit and who can bring the job in on time, regardless of union affiliation.
- Construction union membership has been rapidly declining since the 1960s. Approximately 87 percent of New Mexico’s construction workforce chooses not to join a labor union. In response, union bosses – particularly from the Carpenters union – have undertaken a systematic smear campaign against merit shop construction firms and their workers.
- The Carpenters Union “bannering” campaigns claim that merit shop contractors don’t pay “area standard wages” and accuse them of breaking the law. Their claims are not based on fact and are designed to restrain competition and recover work for union members through the use of lies and street theater to pressure project owners that use merit shop contractors.
- “Bannering” and other similar methods of attracting attention are detrimental to the community, business owners and workers. These smear campaigns are designed to ruin the reputation of law-abiding employers in our community, simply because workers on the job choose not to join a union.
- The union protesters are often not even members of the union. Big Labor – particularly the Southwest Regional Council of Carpenters – frequently employs paid protesters on bannering campaigns. These paid protesters often make near minimum wage and receive no health care or benefits. In other words, the type of low road, race to the bottom wages they are being paid to protest.
- ABC’s goal is to educate owners about the tactics being used, clarify owners’ rights and offer suggestions on how to deal with “bannering.”



# ABC SAYS THANK YOU! GAMETECH & CREEKSIDE CROSSING FOR SUPPORTING 100'S OF FAMILIES IN OUR COMMUNITY

## Press Release

Contact: Clara Andriola, 775.358.7888 ext. 11  
Megan Jackson, 775.358.7888 ext. 15

For Immediate Release  
December 31, 2008

**RENO, NEVADA** – The Sierra Nevada Chapter of Associated Builders & Contractors (ABC) would like to recognize GameTech Wednesday from 10:00 a.m. to 2:00 p.m. at the GameTech job site at 8850 Double Diamond Parkway for their continued support in maintaining the American principle of free choice in who they award contracts to for their construction projects.

ABC is displaying a “Thank You” banner to recognize contractors working on these projects for their commitment and dedication in providing quality workmanship, conducted in a safe environment, while still remaining competitive. It is equally important to acknowledge that all companies working on these projects are supporting 100’s of families in our community.

Contractors on these projects support their workforce with comparable wages and benefits aligned within the construction industry while still remaining competitive. Ron Kelly, owner of Gore Acoustics & Drywall Systems, says that “As a company we take great pride offering our employees fair wages, holiday and vacation pay, health benefits and retirement options. As a result, we have a very low turnover rate. Our employees choose to work at Gore Acoustics because we believe in treating our employees with the utmost respect; we care, value, and recognize their contributions because we understand employees are a major factor in making our company competitive through their quality workmanship, sense of pride and company loyalty.”

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For Supporting 100’s Of Families In Our Community!

In these challenging economic times, especially with the downturn in construction, ABC wants to recognize and sincerely thank the principles of GameTech and Creekside Crossing for supporting all the hired contractors including Gore Acoustics and their valued workforce. A “Thank You” banner was displayed for Creekside Crossing on December 12, 2008.

#####

**Associated Builders and Contractors, Sierra Nevada Chapter** is the Northern Nevadan chapter of ABC, a national construction trade association representing nearly 25,000 merit shop construction and construction-related firms in 79 chapters across the United States.



# We the People

**We, the people of Tulsa say, "Stop the attacks against our city."**

**Like you, we believe in the U.S. Constitution and the right to free speech. However, we also believe in the truth, the whole truth and nothing but the truth.**

**Local labor unions and their out of state allies are protesting reputable companies and individuals in our community, the same companies that create jobs and have given back to Tulsa for decades.**

**The protests have often led to unfounded personal attacks.**

**These union interests have even used the local homeless population to carry out these attacks.**

**Free speech is a staple of our society, but untrue allegations are despicable and un-American.**



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Associated Builders and Contractors (ABC) is a national trade association representing over 300 construction general contractors, specialty contractors, suppliers and construction-related firms across Colorado. ABC promotes open competition and free enterprise.

## Shame on Whom? What the Bannering is all about

By Clara Andriola

You may have seen the “Shame On” banners being displayed around the area. Have you ever wondered what they are about?

The bannering campaign is the creation of the Southwest Regional Council of Carpenters. This campaign, originating in Southern California several years ago, occurs throughout Nevada and is gaining momentum throughout the country as a tactic to hire only union contractors who are employing union members.

Several complaints have been filed with the National Labor Relations Board to determine if bannering is a form of picketing. In accordance with federal law, a union is protected and has very specific guidelines that allow them to picket as a form of free speech. However, the NLRB has yet to rule whether bannering is a form of picketing despite the issue being on their agenda for more than five years.

There are no legal guidelines outlining the use of bannering. Until the



**Union banner, Creekside Crossing is the developer of the project, they were asked to stop using Gore Acoustics & Drywall.**

NLRB makes a determination, bannering continues to be practiced by the Carpenters Union. The method is intended to influence property/project owners to use a union subcontractor to avoid any public retaliation.

Is it illegal? Yes, if it were a picket. Federal law states that a union can not conduct a picket that is intended to persuade third persons not to do business with a company. In short, a union is not allowed to pressure an owner to use a union subcontractor. But according to Federal law, bannering is not legal or illegal because it's not a picket — it's a banner!

If you're thinking about the definition of defamation, which consists of a publication of a statement of alleged fact that is false and which harms the reputation of another person, you can look at all of the information used in bannering and conclude the definition has been satisfied. However, labor organizations are considered a protected class under Federal law. We're back to the original question: Is bannering a form of picketing?

Meanwhile, the Southwest Region Council of Carpenters Union Local #971 forges ahead. In their written correspondence to the property owners and general contractors responsible for project oversight, the Carpenters Union has committed to include highly visible lawful banner displays and distribution of handbills at the jobsite and premises of property owners, developers, general contractors, and other firms where their target sub-contractor is employed. Picketing and demonstration activity is also explained to business owners who have chosen to be merit-shop contractors.

The Carpenters Union explains in letters that they “certainly prefer to work cooperatively with all involved parties rather than to have an adversarial relationship.” The union believes its “structure provides greater flexibility to members and employers, optimizes the use of resources and helps to stabilize the market.” Mandating wages and benefits is counter to an economic market operating by free competition.

Should a business owner be concerned about seeking protection to avoid being subjected to public humiliation? Yes. If you read the Carpenters Union letters to the principal parties funding the development of a project, and if the owner continues to use the subcontractor on the project, then their “Shame On” company name will be displayed on a ban-

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### ABC Positive Bannering Campaign

ner with the corner labels stating “Labor Dispute.” The Carpenters union wants to mandate subcontractors to pay prevailing wages and family health benefits and retirement pensions. This tactic furthers their commitment to “raise area standards for all carpenters in Southern California, Nevada, Arizona, Utah, and New Mexico.”

As a result, the thrust of the bannering campaign is to invoke the claim that merit contractors don’t pay “area standard wages” and are breaking the law. Merit contractors believe, like the majority of business owners in America, that pay should be competitive and performance based. The union’s claims are not based on fact and are designed to eliminate competition and recover work for union members.

Ron Kelly, owner of Gore Acoustics & Drywall Systems, disputes the Carpenters Union allegations. “As a company we take great pride offering our employees fair wages, holiday and vacation pay, health benefits and retirement options. As a result, we have a very low turnover rate,” he says.

“Employees choose to work at Gore Acoustics because we treat them with the utmost respect. We value and recognize their contributions because we understand employees are a major factor in making our company competitive through their quality workmanship, sense of pride and company loyalty.”

Are contractors breaking the law? It goes without question that if contractors, or any business for that matter, conducts illegal activities they should be prosecuted accordingly. Nevada State Law only requires payment of prevailing wages on public projects. Therefore, the Carpenters Union allegations are unfounded, and the subcontractors targeted in the bannering campaign are not performing their work illegally. Contractors, like all business owners, are not required to have mandated wages on private jobs, and benefits are at the discretion of the

company.

A fundamental requirement of a free market economy is based on the free exchange between buyers and sellers to establish a price absent of

any threat of coercion — but the Carpenters Union doesn’t see it that way.

A contractor who doesn’t abide by the union’s established standards is called a “rat” and those business owners are unpatriotic and are to blame for the “Desecration of the American Way of Life.” Handbills stating as much are being placed on the doors of homeowners throughout our area.

The bannering campaign is designed to use coercion by sending threatening letters to the owners and general contractors outlining what will happen if they continue to use the subcontractor they are targeting. The inference of the message is clear — use our signatory contractors who will then supply union members for the project or else!

The protection of free speech is one thing that makes our country great. Americans understand that no subject is immune from the expression of opinions and freedom of difference. There is no dispute regarding our First amendment rights.

However, one would expect allegations would be fact-based when purporting a Labor Dispute. It is concerning in a defamatory manner and gives one pause to question such motives. It is important to be informed and to understand both sides of the issue. The facts are clear.

Whatever industry you conduct your business in there’s no doubt that competition benefits everyone. It is everyone’s responsibility as Americans to ensure that the preservation of open competition and the promotion of free enterprise is absent of coercion, intimidation and threats.

Our founding fathers were adamant about creating a country that allowed people to be free thinkers. So, the next time you see a “Shame On” banner, remember the facts and understand that every employee, employer and investor has the freedom to choose — it’s the American way.

### The Facts

- The area standard wages dispute is untrue—merit workers are paid as well, if not better than union workers.
- Bannering is just the most recent attempt to discredit merit contractors.
- Union membership has been declining for decades, and unions are desperate to gain market share and membership.
- The Carpenters Union local #971 allows a reduced wage for “Light Commercial Projects (under \$7 million),” a wage \$4 to \$5 per hour less than prevailing wage.
- Several companies have mailed letters to the Carpenters Union requesting it support their labor dispute allegations without any reply.

### The Tactics

- The Union sends letters to construction project owners and other parties stating they are in a “labor dispute” with a merit contractor requesting that the owner use its “managerial discretion” to rectify the situation.
- If the owner continues to work with the contractor, the Union threatens it may begin an “aggressive and highly visible lawful bannering display, distribution of handbills...picketing and demonstration activity.”
- Banners say things like, “Labor Dispute, Shame on (Owner’s Name)” may be displayed at any of the owners’ facilities.
- The Union may also ask that the owner sign a letter saying it will not work with the contractor again until the alleged labor dispute is resolved.
- The NLRB has yet to make a decision about the legality of bannering; however, it is illegal for the people picketing to trespass on private property or to block access or egress to a business.

Contact ABC to find out what your rights are 775-358-7888.

## Letterhead

Response to union picket:

We are used to the interference. For the last 5 or 6 years the carpenter's union has been protesting our projects, harassing our employees, and in a few instances, following my employees home. Usually they come in our office, with arms folded, telling us how we should be running our business and that they can make all of our problems go away. At this time our only problem has been the union. No one likes to be bullied. One local business agent from the carpenter union likes to come in my office and ask me about my family. Then he goes to all of our customers and tries to get us kicked off their jobs. This is the same fellow who is standing in my window calling me a rat. It is very difficult to explain to my 6 year old son why someone is standing at our family business calling his dad a rat.

It is also difficult to understand how the union can shout things like "Same work, Same pay" when the fact is our employee's take home pay is more than what the unions offer. We provide healthcare for our workers and their families. Our health care system is better than the unions can provide. We pay our pensions in cash, approx \$10/hour which gives our employees flexibility to choose their own savings or retirement plan. The only difference is our employees don't pay dues or answer to an organization that is known for political influence and bringing down industries. They are also chanting "Go Home." We are home!! In fact none of the picketers are even from the area. The goal of the carpenters union is get everyone to join so that everyone is paying the "area standard" and their dues. In fact the area standard for County, for a state project, is \$45.73/per hour for a carpenter. That means if you would like to have any work done on your house you are forced to pay an employee prevailing wage. I don't know too many people that could actually afford that rate or would be in favor of every company charging the same rates for their employees, no matter what their skill or quality level. It eliminates competition and makes big companies even bigger. All of the union concessions tend to go toward the companies with the most employees.

We don't go to other businesses and tell them how they should operate so we don't appreciate it happening to us. This in America and you are allowed to state your opinion. We just feel the facts should be correct before any judgment is made. We are all here to feed our families and keep our chins up during this down turn in our economy.

Thank you,

President

# New Times / News

The following articles were printed from New Times [newtimeslo.com] - Volume 24, Issue 32

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## Shame on everyone

*You've probably seen them around, but who are the Carpenters Local 150?*

BY COLIN RIGLEY



### BACKLASH

*Last December, community members protested back after months of confusing 'bannering' by the Carpenters Local 150 in front of Doc Burnstein's Ice Cream Lab in Arroyo Grande. Pictured left to right are owners Greg Steinberger and Marie Cavaletto, and a Carpenters protester who declined to give his name.*

FILE PHOTO BY STEVE E. MILLER

Somewhere there must be a factory that belches out “shame on” whomever banners and people to hold them. It seems the only explanation for how the Carpenters Local 150, a Camarillo-based union, has become so ubiquitous in SLO County.

The Local 150 represents 1,400 members out of Camarillo, one branch of the Southwest Regional Council of Carpenters, which falls under the half-million member United Brotherhood of Carpenters. Few can say when or why it started, but by best estimations, the Local 150 developed a proclivity for “bannering” local businesses about two years ago.

For the Carpenters, bannering usually involves two or three people standing next to a large vinyl banner with block lettering calling “shame on” whatever business they’re protesting, and flyers calling the business owners “rats” who desecrate “the American way of life.” Those who pass out the flyers tend to be shy about explanations and even the union leadership has developed a reputation for silence.

Numerous calls to Local 150 President Joseph Duran were never returned, nor were calls to the Southwest Regional Council of Carpenters headquarters in Los Angeles. In fact, the union has not responded to other local media or the *L.A. Times*.

Most who’ve ended up at the business end of the Carpenters’ bannering are often confused about what they did wrong. Perhaps most notably baffled is Greg Steinberger, owner of Doc Burnstein’s Ice Cream Lab in Arroyo Grande. Like many, Steinberger’s business became a bannering post with such words as “labor dispute” displayed to the public when there is in fact no labor dispute at the business.

According to interviews with others who have been bannered, the Carpenters simply banner businesses that hire non-union labor, whether or not there’s a union agreement in place. One person, speaking on condition of anonymity out of fear of being bannered again, said, “It’s like bullying, basically.”

Steinberger never hired non-union contractors. In fact, he didn’t hire anyone. Steinberger’s business was bannered because he is opening a new location in the Santa Maria Town Center, which hired non-union labor for remodeling work. However, Steinberger had no part in who did the remodeling work and is himself just renting the space.

By going after an “innocent bystander,” Steve Weiner, executive secretary treasurer of the Tri County Building and Construction Trades Council, said the Carpenters went too far.

"Bannering is something that people can use to get messages out," he said. "But freedom of speech doesn't give you the right to yell fire in a crowded movie theater ... there's no fire here."

Members of the Tri-County bought free Doc Burnstein's ice cream for residents on Feb. 26 to protest the Carpenters' protest.

"That's what true labor movement is supposed to do," Weiner said. "Is stand up against injustice."

Steinberger has a charge awaiting review by the National Labor Relations Board. Indeed, his was the most recent charge filed against the Local 150. Two other businesses—SVC Quality Care of Valencia and Drywall Dynamics of Paso Robles—filed their own charges under nearly identical complaints last year.

Protesters were stationed out front of the SVC Quality Care medical clinic for about three months because the private clinic had not hired union labor—the Carpenters were the only union bidders—to remodel a new clinic location. During those demonstrations, protesters filmed patients going in and out of the clinic, causing some people to cancel their appointments, according to the charge.

In March 2009, Drywall Dynamics President Jay Silva filed his own charges against the union after being the target of roughly 10 protests, he said. Silva, who's been in the drywall business for 30 years, said he lost jobs when the Carpenters told his clients he was paying unfair wages, always threatening to protest unless a union contractor was hired.

"And it's not a matter of them wanting me to join the union, it's a matter of them wanting me out of business," Silva said, adding that Carpenters President Duran has never returned his calls.

When Silva put in a bid for work with the private utility Atascadero Mutual Water Company, the Carpenters sent a letter to the company with a warning not to hire Silva or face the consequences. At times, the letter can read like lines out of a Joe Pesci movie. In the letter, Duran warns that hiring Drywall Dynamics would result in an "aggressive public information campaign." If the company chose not to accept Silva's bid, "Doing so will provide the greatest protection against your firm becoming publicly involved in this dispute through misunderstanding or error."

Silva was ultimately awarded the bid and sure enough the Carpenters began protesting.

"I don't know what the end game is," Silva said. "I really don't. I can't figure it out."

Aside from the formal charges, other local businesses have been targeted, including Meathead Movers and the SLO Holiday Inn Express, said Lindsey Miller of the SLO Chamber of Commerce.

In 2004, the National Labor Relations Board took a case to the U.S. Ninth Circuit Court of Appeals on behalf of construction businesses in San Diego, Los Angeles, and Phoenix that had been bannered by the United Brotherhood of Carpenters.

Citing nearly identical circumstances to those SLO County business owners have complained about, the Labor Board argued that bannering was essentially "picketing," and therefore the practice violated federal labor laws. The Carpenters appealed all the way up to the Ninth Circuit Court, which ruled that, despite some fuzzy public perception on bannering, it qualifies as free speech and is therefore OK so long as protesters don't block business entrances or march and shout, for example.

Judge Andrew J. Kleinfeld was the sole dissenting vote and said that the bannering practice should not be protected in part because it's misleading to anyone without an encyclopedic knowledge of labor jargon.

"A reasonable person driving by the Westin Bonaventure [hotel] or the other firms subjected to the banners would think, 'that company must not be treating its employees right,'" Kleinfeld wrote in his opinion.

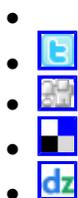
Every business owner who spoke with *New Times* said the Carpenters had hired non-union pedestrians, in some cases, to stand by banners and hand out flyers.

For now, the three charges filed against the Local 150 are essentially stalled. The Labor Board is at least one member short of a quorum and has been so for about a year. In other words, any charges that would go to the labor board for action are on the back burner until additional members, currently held up in Senate appropriations politicking, fill the empty seats.

As of press time, the Carpenters were still protesting at Doc Burnstein's. "I've really tried to figure out what are they trying to achieve with this," Steinberger said. "Because they're obviously not winning over public sentiment. They're not getting more contracts."

*Staff Writer Colin Rigley can be reached at [crigley@newtimeslo.com](mailto:crigley@newtimeslo.com).*

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DEAN HANSON/JOURNAL

Hired picketers hold up a sign in front of Il Vicino restaurant at Alameda and Corrales Road on Feb. 18. The Southwest Regional Council of Carpenters is behind the banner protests that have been seen around town. Carpenters Local 1319 is listed on fliers handed out by protesters.

# BLASTING THE BANNERING

Carpenter's union 'Shame On' picket campaign refuses to explain its actions or how it picks targeted businesses

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Albuquerque Journal

BY RIVKELA BRODSKY  
Journal Staff Writer

It remains unclear what's behind a carpenter's union "Shame On" banner campaigns around Albuquerque for the past year, but more trade organizations and businesses are standing up against what

they are calling "divisive" tactics that are a "black eye on our entire community."

The Los Angeles-based Southwest Regional Council of Carpenters acknowledges it is behind the "Shame On" banner campaigns but has little else to say.

The union hires workers to hold up signs reading "Shame On" followed by the name of a hotel, restaurant,

store or other business and to hand out fliers depicting a rat in a house eating an American flag. The fliers say Carpenters Local 1319 is behind the campaign and list a name and number for each business or entity being called out, urging people to phone to "see that area labor standards are met."

The same council, which is building a \$20 million

training center at I-25 and Comanche NE, has remained silent on its reasons behind the protests and maintains the training center project is unconnected.

"We are the same entity but they are not related," Justin Weidner told the **Journal**. Weidner is chief of staff for the organization, which represents 65,000 members in

# Union campaign irks community

from PAGE 1

five Southwest states: Nevada, Arizona, Utah, California and New Mexico.

Repeated messages for Carpenter's Union Local 1319 President David Barber were not returned, but the message was eventually referred to Weidner in Los Angeles.

## Union: "No comment"

Asked what was behind the protests, Weidner said, "I have no comment on that."

Chet Karnas, president of Lone Sun Builders Inc., became so angry after the union targeted his company at several job sites in Albuquerque and Santa Fe that he counter-protested the union at the St. Francis Hotel in Santa Fe last summer. He also created a blog with video clips, news links and more dedicated to fighting the protests. He's also been active in bringing the issue to the attention of business organizations and recently to lawmakers in Santa Fe.

"This is a black eye on our entire community," he told the **Journal**. "There's 22 to 28 percent unemployment in the construction industry. This is doing nothing to help the construction unemployment rate. It's a visual blight. It's divisive to labor relations and business relationships."

Karnas said the information contained in fliers handed out at sites that target Lone Sun are "slanderous," saying he offers higher-than-union wages and a full line of benefits to his employees. He said the union is trying to beef up its membership through its campaign.

"They tend to target good businesses because they want dues," he said.

Il Vicino's newest location at Alameda and Corrales Road has been a recent target of carpenter's union protests and general manager Javier Rocha says it has hurt business.

"I know some people have turned away because of that," he told the **Journal**. "We have some people that are real supportive and we have people who don't really understand what's



DEAN HANSON/JOURNAL

**Rick Thaler, owner and president of OGB Architectural Millwork has joined the fight against the Carpenter's Union "Shame On" banner campaign by putting up a banner of his own at his company near Paseo del Norte and Jefferson NE.**

going on."

He said he has had some tense moments with the carpenter's union because of the protests — including an incident where carpenter's union protesters were asked to move vehicles from parking spots in the shopping center where Il Vicino is located.

## Nasty confrontations

"The union person that checks on them got really nasty with me one time," Rocha said. "He started calling us bottom feeders, kept cussing, being real irate, and was giving us the bird from across the street."

The incident was witnessed by customers and people driving by, he said.

Rick Thaler, owner and president of OGB Architectural Millwork, is trying to turn the banner tables on the union. He is hoping people see his sign reading "Shame On Carpenter's Union" when they drive by his business near Paseo del Norte and Jefferson NE.

He wants all contractors and subcontractors to do the same, telling the **Journal**, "We need to send these guys home."

"We need a union that will behave like a union, not like a bunch of thugs," he said.

Roxanne Rivera-Wiest, president of the Associated Builders and Contractors of New Mexico, said many businesses are starting to feel their reputations being threatened by the protests.

"The public thinks there is something going on that is not right, but, in truth, these contractors are being targeted simply because they are not union contractors," she said. "It's bad for owners, bad for contractors. It's just bad for the business community at large."

The association condemned the tactics used by the carpenter's union in an opinion piece published in the **Journal** in December.

Two other trade organizations have taken a public stance against the union protests, including the American Subcontractors Association of New Mexico, which called the Carpenter's union tactics "unprofessional, unproductive and divisive" in a news release sent to the **Journal**.

# Union campaign divisive

from PAGE 7

"The American Subcontractors Association of New Mexico ... will not endorse behavior that results in a negative image for the construction industry in our state," the release states.

## "It's hurting business"

Elizabeth Price, executive director of the group that represents union and nonunion members, told the **Journal** the demonstrations are not "business friendly."

"It's hurting businesses," she said. "There's general contractors who don't want to have anything to do with union members because of what's going on, and we have businesses who will only hire union members because of what's going on."

The Greater Albuquerque Chamber of Commerce is also looking at the issue and has formed a task force to look into it. Don Kawal, who retired as president of



JOURNAL FILE

**Benjamin Lutes, left, of Lone Sun Builders stages a counter-protest at Santa Fe's St. Francis Hotel on June 4, 2009.**

Klinger Constructors LLC two years ago, is heading up the committee.

"First of all, what has happened is the banners have appeared at neutral employers. Those banners are directing their signs, etc., to a business that doesn't have a direct relationship with the carpenter's union," he told the **Journal**. "What happens is that impacts the

businesses. It does affect the particular business. The other thing in a broader spectrum, it's not an asset when it comes to economic development in our community."

Weidner, with the Southwest Regional Council of Carpenters, said he had no comment when asked about the divisive nature of the protests.

*Business*

# Outlook

MONEY RATES ♦ PAGE 16



MONDAY, MARCH 8, 2010

## **A BIT MORE COMPLICATED**

*Columnist Quigley explores the myths of the Boston Tea Party and settling of the West.*

**PAGE 3**

# Picketing campaign expands

## *Journal Staff Report*

The Los Angeles Times this month reported that in recent years, "Shame On" banners and fliers have become fixtures on the national labor landscape, going up outside countless businesses big and small, from housing projects in Phoenix to a bowling alley on Long Island.

Many of the targets have used general contractors who hired nonunion subcontractors. But sometimes the links have been more indirect. A Tulsa, Okla., country club was bannered because a member headed a nonunion contracting firm. In Bakersfield, Calif., banners declared "Shame on Tony Bennett" and "Shame on the Fox Theater" when the singer performed there in 2006. The event was a fundraiser for a medical center with subcontractors unacceptable to the union.

Some unions disapprove of bannering, which often targets businesses not directly involved in labor disputes. And others — including attorneys for the National Labor Relations Board — have argued that they are coercive, unfair and possibly unlawful.

Eleven bannering cases are awaiting judgment by the NLRB, but three of the federal agency's five seats have been unfilled for two years. Nobody knows when congressional gridlock over the appointments will end or whether a bannering ban would stand up.

Justin Weidner is chief of staff of the Southwest Regional Council of Carpenters, a 65,000-member union operating in five states including New Mexico that is behind much of the bannering. "We believe it's an effective tactic," he said. "That's why we continue to use it."

Still, some campaigns have drawn critics even within union ranks.

Bob Oedy, an International Brotherhood of Electrical Workers organizer, said the tactic "can also be very counterproductive."

*Business*

# Outlook

MONEY RATES ♦ PAGE 16



MONDAY, MARCH 8, 2010

## **A BIT MORE COMPLICATED**

*Columnist Quigley explores the myths of the Boston Tea Party and settling of the West.*

**PAGE 3**

# Pickets kill Hotel Andaluz campaign visit for Biden

The carpenter's union's ongoing bannering campaign even came into play around election time last fall.

Vice President Joe Biden was scheduled to appear at a \$1,000-a-plate luncheon at Hotel Andaluz in Albuquerque in November to help raise campaign cash for Democratic Reps. Martin Heinrich and Harry Teague.

But picketers in front of the hotel had event organizers from Washington, D.C., changing plans.

"They didn't want to cross the picket line," Gary Goodman, real estate developer and owner of the hotel, told the **Journal**. "It was a loss of national PR. It would have meant a lot."

The event was moved to Hotel Albuquerque, Goodman said, where organizers thought they'd be free from union bannering.

They were free of protesters for that day — but it is a property that was being targeted by the union during that time, and it continues to be a target of the carpenter's union.

Picketing Hotel Albuquerque and Heritage Hotels & Resorts CEO Jim Long is not right, either, Goodman said.

"Here Hotel Albuquerque is owned by Jim Long, who is working hard to create jobs in Albuquerque, and they are picketing him," he said.

It's a similar situation for Goodman, whose renovation of the former La Posada into a green boutique hotel was completed in October of last year.

"We've invested \$30 million into Downtown Albuquerque, desperately needed investment during a time when no one is working," he said. "We employed 250 people. Of that 250 people, 250 were local. Now we employ 150 people permanently, all with extensive benefit packages, better than the union offers, and yet they're trying to hurt this hotel. That's their goal."

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By Staff Writer Rivkela Brodsky

*Business*

# Outlook

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MONDAY, MARCH 8, 2010

## **A BIT MORE COMPLICATED**

*Columnist Quigley explores the myths of the Boston Tea Party and settling of the West.*

**PAGE 3**

# The Washington Post

## Outsourcing the Picket Line

Advertisement

Carpenters Union Hires Homeless to Stage Protests

By Keith L. Alexander  
Washington Post Staff Writer  
Tuesday, July 24, 2007

The picketers marching in a circle in front of a downtown Washington office building chanting about low wages do not seem fully focused on their message.

Many have arrived with large suitcases or bags holding their belongings, which they keep in sight. Several are smoking cigarettes. One works a crossword puzzle. Another bangs a tambourine, while several drum on large white buckets. Some of the men walking the line call out to passing women, "Hey, baby." A few picketers gyrate and dance while chanting: "What do we want? Fair wages. When do we want them? Now."

Although their placards identify the picketers as being with the Mid-Atlantic Regional Council of Carpenters, they are not union members.

They're hired feet, or, as the union calls them, temporary workers, paid \$8 an hour to picket. Many were recruited from homeless shelters or transitional houses. Several have recently been released from prison. Others are between jobs.

"It's about the cash," said Tina Shaw, 44, who lives in a House of Ruth women's shelter and has walked the line at various sites. "We're against low wages, but I'm here for the cash."

Carpenters locals across the country are outsourcing their picket lines, hiring the homeless, students, retirees and day laborers to get their message across. Larry Hujo, a spokesman for the Indiana-Kentucky Regional Council of Carpenters, calls it a "shift in the paradigm" of picketing.

Political groups also are tapping into local homeless shelters for temps.

One resident of the Community for Creative Non-Violence shelter earns \$30 a day holding a sign outside a Metro stop protesting nuclear war. In 2004, residents of at least 10 shelters were paid to collect signatures on petitions in favor of legalized gambling. Residents call this type of work "lobbying."

The carpenters union is one of the most active picketers in the District, routinely staging as many as eight picket lines a day at buildings where construction or renovation work is being done without union labor.

Supporters of the practice consider it a creative tactic in an era of declining union membership and clout. But critics say the reliance on nonunion members -- who are paid \$1 above minimum wage and receive no benefits -- diminishes the impact and undercuts a principle established over decades of union struggles.

"If I was a member of the general public, and I asked someone picketing why they were there, and they said they don't work for the union and they were just hired to stand there, that wouldn't create a very positive impression on me, nor would it create a very sympathetic position," said Wayne Ranick, spokesman for the United Steelworkers of America.

The United Brotherhood of Carpenters and Joiners of America, the Mid-Atlantic local's parent, is one of seven unions in Change to Win, a group formed in 2005 after a split from the AFL-CIO. One reason the carpenters union left was because it favored more aggressive organizing.

The United Brotherhood of Carpenters is the only union that routinely hires homeless people for its picket lines, union leaders and labor scholars say. It targets locations where work such as carpentry and drywall and floor installation is done without union labor. In a June newsletter on the union's Web site, the union's president and chief executive, Bill Halbert, referred to the pickets as "area standards campaigns."

Halbert did not respond to phone calls and messages left at the union's office in Forestville. George Eisner, the local's lead organizer in Baltimore, did not keep an appointment for a scheduled phone interview and did not answer several messages.

Hujo said the Indiana-Kentucky council has been hiring homeless people, retirees and college students as picketers for about two years.

Carpenters unions in Indianapolis, Atlanta, Baltimore, Miami, San Diego and Columbus, Ohio, also hire picketers, including the homeless, largely because the union members are busy working and aren't able to leave job sites, he said.

"People say it's not normal," Hujo said. "But this is a quality-of-life issue. This is not a union versus nonunion issue."

Other unions have not embraced the idea of hired feet, but few openly criticize the carpenters.

Joslyn Williams, president of the Metropolitan Washington AFL-CIO, differentiated between picketers calling for a boycott or a strike and picket lines such as the ones the carpenters have. "It's an informational picket, so it's a legitimate tool," he said.

John Boardman, executive secretary treasurer of UNITE HERE local 25 in Washington, said the issue of who the picketers are is less important than why they're there. "Let's focus on the message -- that there are people in this building that are working for substandard wages and benefits," he said.

In Washington, the carpenters union targets a different building almost daily.

At the protest site, union organizers ask for identification and a Social Security card from those who want to picket. The picketers are divided into groups of about 30, and some are sent on to other sites. They are often accompanied by an eight-foot-tall inflatable rat brought in by pickup.

On a recent Thursday morning, one group was sent to 1100 13th St. NW, another group to the corner of 21st and M streets. Typically, two or three union members are on hand to oversee each group. Armed with clipboards, they check off the names of picketers when they arrive and leave to ensure that they work their full two to four hours.

One day, a group picketed from 9 to 11 a.m. in the 600 block of Indiana Avenue NW. After an hour lunch break, the picketers headed to the 900 block of Capitol Street NW from noon to 2 p.m.

Their placards have the name of the targeted firm taped at the top; when the picketers move on to another company, the name is changed.

Capitol Drywall was the name on one placard two weeks ago. The carpenters' picketers were outside an office building on New Hampshire Avenue NW, where the company's employees were erecting drywall.

Mark Sokoloff, Capitol's vice president of operations, said his company is not unionized but offers its employees fair and competitive wages, as well as benefits.

"It's something that we would like to see disappear and go away," he said of the picket lines that appear frequently at job sites. "But if it won't, it's something that we will deal with."

The picketers get mixed reactions from passersby. Some drivers honk to show support. But many who work in nearby buildings and must listen to the picketers' chants for several hours are irritated.

Several picketers said they have had water thrown on them from upper floors in office buildings. That only encourages picketers to get louder, said one picketer who asked that his name not be published.

D.C. police Cmdr. Patrick Burke, who oversees the homeland security and special operations division, said the picketers have never broken any laws. If police receive noise complaints, officers will ask them to quiet down, he said, and they always comply.

"They have a First Amendment right to engage in free speech and assembly," he said. "We don't want to discourage people from doing so. But they just have to do so within reason."

Some activists for the homeless are unhappy with the practice of paid picketing. They say it amounts to using people down on their luck rather than giving them a hand up. Ingrid Reed, who coordinates job placement and housing at the Community for Creative Non-Violence shelter, said the money the unions pay picketers would be better spent on training or apprentice programs that teach skills.

"These jobs won't pay the rent," Reed said. "If they're out there every day Monday through Friday, when are they looking for a job?"

Reed said many residents of the shelter are hired to demonstrate at corners throughout the city.

"On any given day, if you have 20 protesters out there somewhere, 15 of them live here," she said.

Several picketers said they see the time spent on the line as one of the few legal ways they are able to earn money.

William R. Strange, 41, said he started working as a for-hire picket two years ago when he lived in a homeless shelter on New York Avenue. He is now paid \$12 an hour because he plays the buckets during the demonstrations.

A few months ago, after a day's picketing across from the National Geographic Society at 17th and

M streets NW, Strange went inside and filled out a job application. He now loads trucks for National Geographic's warehouse at night. He still pickets during the day.

Strange also recently moved into his own one-bedroom apartment near the Brookland Metro station.

"Every day I turn that key to my apartment, I feel great. I owe that to the picketing," he said. "And it keeps me out of trouble."

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# To Protest Hiring of Nonunion Help, Union Hires Nonunion Pickets

*Jobless Recruits Get Minimum Wage 'To March Around and Sound Off'*

By JENNIFER LEVITZ

WASHINGTON—Billy Raye, a 51-year-old unemployed bike courier, is looking for work.

Fortunately for him, the Mid-Atlantic Regional Council of Carpenters is seeking paid demonstrators to march and chant in its current picket line outside the McPherson Building, an office complex here where the council says work is being done with nonunion labor.



Jennifer Levitz/The Wall Street Journal

A protester pickets a building contractor outside the McPherson Building in Washington last month.

"For a lot of our members, it's really difficult to have them come out, either because of parking or something else," explains Vicente Garcia, a union representative who is supervising the picketing.

So instead, the union hires unemployed people at the minimum wage—\$8.25 an hour—to walk picket lines. Mr. Raye says he's grateful for the work, even though he's not sure why he's doing it. "I could care less," he says. "I am being paid to march around and sound off."

Protest organizers and advocacy groups are reaping an unexpected benefit from continued high joblessness. With the national unemployment rate currently at 9.5%, an "endless supply" of the out-of-work, as well as retirees seeking extra income, are lining up to be paid demonstrators, says George Eisner, the union's director of organization. Extra feet help the union staff about 150 picket lines in the District of Columbia and Baltimore each day.

Online postings recruit paid activists for everything from stopping offshore drilling to defending the Constitution.

In California, one group is offering to pay \$10 and up per hour to activists to hold signs in demonstrations against foam cups and plastic bags.

In Bellevue, Wash., the Faith and Freedom Network plans to hire activists for about \$10 an hour next month to promote statewide candidates with Judeo-Christian values for the fall elections, says Gary Randall, the group's president. Recruits will knock on doors and will be dispatched in large groups, hoping to draw media attention, he says.



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Pierce Hutchings, a Chicago businessman and baseball fan, staffed a rally at Wrigley Field on the Cubs opening day in April by posting an ad on Craigslist offering \$25 of his own money to anyone willing to show up.

The cause? To protest plans to erect a big Toyota advertising sign in left field. The sign drew criticism from many Chicago residents and merchants who said it would impede their rooftop views of games. About 50 people showed up, put on yellow "No Sign @ Wrigley" T-shirts supplied by Mr. Hutchings, and urged passersby to call their local elected officials. The sign was put up anyway.

While the money offers some relief for the unemployed, plugging a cause, even one that seems worthy, can be dispiriting.

"I told one guy today that I was fighting global poverty, and he looked me in the eye and said, '*I don't care*,'" says Stephen Borlik, a new college graduate posted outside a D.C. subway stop recently as a \$13-per-hour street fundraiser for CARE, the antipoverty nonprofit organization in Atlanta.

Mr. Borlik moved here in May after graduating from Central Michigan University in Mount Pleasant. He is living with his brother while looking for a job. "It can be extremely frustrating sending out résumé after résumé and getting no response. It almost makes you not want to do anything."

To keep his job at CARE, Mr. Borlik says, he must hit a weekly quota of new donors giving a minimum of \$20. A CARE spokeswoman says "team members" in the organization's "Face-to-Face" fund-raising program have a goal of two new donors per day.

In Atlanta, Timothy Baker, a 40-year-old unemployed warehouse worker, says his money-making strategy has been to walk picket lines for \$8.50 an hour for the Southeastern Carpenters Regional Council. "It's something to do until you find something better."

While many big unions, including the International Brotherhood of Electrical Workers, frown on using nonmembers in picket lines, "we're not at all ashamed," says Jimmy Gibbs, director of special projects for the Southeastern Council. "We're helping people who are in a difficult situation."

For four hours at the recent Mid-Atlantic carpenters' union protest in D.C., about 50 picketers-for-hire—some smoking cigarettes, reading the paper, or on their phones; a few leaning on canes—walked in a circle outside the McPherson Building. The place is home to a Starbucks, a spa and offices. "Some days, the beat is very good," said James Harff, chief executive officer of Global Communicators LLC, a public-relations concern, tapping one foot in his second floor office. Other days, he can hardly hear himself think.

"Low Pay! Go away!" and "That Rat Gotta Go!" the union stand-ins chanted as other workers banged cow-bells and beat on a trio of empty plastic buckets. Eric Williams, a 70-year-old retiree who said he needs extra cash to buy groceries, wore a sign saying that Can-Am Contractors, a nonunion Maryland drywall and ceiling concern, "does not pay area standard wages & benefits."

The target of the campaign is the Chicago School of Professional Psychology, which is opening new classrooms on the second floor of the McPherson Building, and is having renovations done, including dry-walling by Can-Am.

"It is bizarre," says Lynne Baker, a school spokeswoman, about the union's hiring of nonunion picketers.

Inside, Juan Flores, Can-Am's foreman, said his nonunionized workers are paid fairly. Of the protesters, he said, "I don't blame them—they need the money, but they look like they are drunk or something."

The union's Mr. Garcia sees no conflict in a union that insists on union labor hiring nonunion people to protest the hiring of nonunion labor.

He says the pickets are not only about "union issues" but also about fair wages and benefits for American

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workers. By hiring the unemployed, "we are also giving back to the community a bit," he says.

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