

***. Arizona Unions Likely to Be Busy:
Are Construction Employers Prepared?***

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Most construction industry employers, whether union or nonunion, are at least somewhat aware of the implications of increased union activity by construction trade unions. The possibility of job-site disruptions by picketers, pressure to sign project labor agreements and the specter of unfair labor practice charges can throw a wrench into a project's schedule and an employer's budget.

The likelihood that Arizona construction unions will be more visible and active in the coming year is almost certain. With the merger in March 2001 of the Arizona State District Council of Carpenters and the Southern California/Nevada District Council, a new entity emerged with a big budget and increased personnel devoted solely to organizing. The new Southwest Regional Council of Carpenters has already approached a group of Arizona drywall contractors seeking to obtain recognition and to grab a foothold in this trade, most likely as a springboard to other organizing activities. Whether that contractor group signs an agreement or not, the Carpenters have been very open about their intent to target other drywall contractors and seek recognition, voluntarily or otherwise. In either case, construction employers should be prepared for the direct and indirect effects of the Carpenters' activities—because if the Carpenters are in any way successful in their efforts, other unions are sure to follow their lead.

In the construction industry, unions have a number of options when trying to organize. They frequently will approach employers with a proposal that the employers sign onto an existing agreement in their trade. This is permissible in the construction industry — in other contexts; an employer may not sign an agreement with a union unless there has been a demonstration that the union in fact has the support of a majority of the company's employees. This kind of agreement, known as a prehire agreement or

project labor agreement (and sometimes referred to as a "Section 8(f)" agreement, based on the section of federal labor law from which it derives), obligates the company to recognize the union during the term of the agreement, but at its expiration, the employer can walk away from the relationship.

The difficulties with these agreements arise when an unwary employer signs onto provisions proposed by the union that are either unlawful, or have farther-reaching implications than are obvious from the language of the agreement. For example, one painting contractor unwittingly signed a contract with a broader scope than what he intended, and ended up being sued by the union over pension fund contributions for employees on projects he never believed were covered by the agreement. Another employer signed what he thought was a prehire agreement, but was unaware that language in the agreement could be used against him to keep him in the relationship beyond expiration of the contract.

Unions can and do put varying degrees of pressure on employers to induce them to sign prehire agreements. In some cases, the union just lays it out — they can get the company to sign the agreement voluntarily, or they will mount an aggressive campaign among the company's employees to demand an election and create a virtually permanent relationship with the employer. Or they can picket the employer, using the disruptions and economic strain of a strike to force the employer to capitulate. The most important thing a company confronted with these issues can do is to talk — early on — with someone conversant in labor law to develop a strategy for dealing with the union and whatever approach the organizing effort takes.

Another area in which employers can be caught unawares is the union tactic known as “salting.” Salting occurs when a union sends paid or volunteer union organizers to apply for job openings, with the intent of being hired and organizing~ the work force from within. Under the National Labor Relations Act (NURA), applicants for employment enjoy the same protections against discrimination as do employees, and a refusal to hire otherwise qualified applicants because of their union affiliation violates the law, The same principle applies to salts.

Of course, most employers reasonably believe that hiring a known union organizer is akin to inviting the Trojan horse into the backyard. But the end result of refusing to hire salts can be costly. Unfair labor practice charges filed on behalf of the rejected applicant can result in a remedy requiring back pay for the period the individual would have worked on the project. And this is in addition to what the company already paid the employee he actually hired for the position

While salting is a tactic that generates a multitude of unfair labor practice charges and can result in thousands of dollars in back pay and legal fees, it is not a very successful approach to organizing. Very few union elections have resulted from salting. Nevertheless, unions continue to use this tactic and will likely combine it with other approaches to achieve their organizing goals. It will be important for employers to recognize the issues and potential pitfalls that can result when a union targets their company.

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