



Lake County Contractors Association Professional Practice Report

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MULTI-EMPLOYER BARGAINING

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Probably every construction contractor and subcontractor, along with many material suppliers, in the Chicagoland area who employ union tradesmen are faced at some point with the decision of whether or not to assign collective bargaining rights to the multi-employer bargaining association that negotiates the so-called "master" agreement for various trades.

In making this decision, most construction employers assume that the "master" agreement negotiated between the multi-employer association and the union will automatically apply to them. This assumption, however, is incorrect, as are many other assumptions commonly held by contractors regarding multi-employer bargaining. This article will attempt to provide a primer of some of the advantages and disadvantages as well as some of the issues a contractor might consider in deciding whether to assign bargaining rights to a multi-employer bargaining group.

Advantages - Multi-employer bargaining is common in the construction industry and has long been the norm in areas where union labor predominates. The two principal advantages of multi-employer bargaining are that it provides for standardization of wage and benefit rates as well as terms and conditions of employment in the industry throughout the area. Multi-employer bargaining also theoretically allows the contractors to negotiate with the unions from a position of strength rather than individually to offset the inherent advantage of the union's negotiating strength derived from its representation of most or all tradesmen in a particular craft.

Another advantage of multi-employer bargaining is that it relieves the individual contractor from the legal obligation to bargain with a union representing their employees, thereby avoiding many potential risks inherent when an individual attempts to engage in collective bargaining with the union. It has also been said that multi-employer bargaining prevents the union

from targeting individual employers for what are known as whipsaw strikes. This theoretical advantage, however, assumes that all members of the group would honor a lockout, which may or may not be the case. Perhaps the principle advantage in multi-employer bargaining can best be illustrated by the old Sioux Indian phrase, "the strength of the wolf is in the pack and the strength of the pack is in the wolf".

Misconceptions 1 - There are many common misconceptions regarding multi-employer bargaining. The most important is the assumption that the union must offer the contractor the collectively bargained agreement. In fact no such obligation exists. And the "Short-Form" or "Memorandum of Agreement" signed by a non-signatory contractor usually says they are bound to all the conditions of the "Master" agreement, and then details all the **ADDITIONAL** conditions they agree to such as liability for wages and benefits for subcontractors, recognition language and other conditions they could not get during negotiations.

Misconception 2 - Another misconception is the contract that is negotiated is between the multi-employer association and the union, not between the individual contractor and the union. In fact, the multi-employer bargaining association negotiates on behalf of those who have assigned it bargaining rights. Therefore, the contract that is executed is legally binding on all contractors who have assigned bargaining rights – just as if they signed the contract themselves.

Misconception 3 - If a contractor assigns bargaining rights to a multi-employer association it is bound by all contracts that association might bargain with other trade unions. This is also false. A contractor is bound only to those collective bargaining agreements for which it has specifically assigned bargaining rights to the multi-

employer association, and no other contract negotiated by the association.

Misconception 4 - There are also common misconceptions about whether, and if so when, a contractor might withdraw an assignment of collective bargaining rights, and the effects of doing so. Simply stated, a contractor can withdraw an assignment of bargaining rights prior to the commencement of negotiations. In other words, if a contractor assigned bargaining rights back in 1977, it can still withdraw that assignment prior to the commencement of negotiations for a new contract to begin in 2004. Once the negotiations have started between the association and the union for a new contract, however, the employer cannot withdraw the assignment.

The restrictions on the right to withdraw are often seen as a disadvantage, which leads to many contractors not assigning bargaining rights. The question of whether in the real world this is a disadvantage should be analyzed more closely. The fact is that no contractor or subcontractor has any realistic chance of negotiating individually any better contract with the union than the multi-employer bargaining association. It is very possible that an individual contractor acting on its own will not be able to negotiate an agreement with the union that is as favorable as the multi-employer negotiated “master” agreement.

In doing a little research in order to prepare this article, I came across an article written by a colleague, **Howard Mocerf**, formerly with Rosenthal & Schanfield, published in the February, 1998 *Professional Practice Report*, who very succinctly and correctly summarized the practicalities of individual bargaining as follows:

“As a practical matter an individual contractor going it alone faces an almost impossible task of getting a better settlement than the agreement negotiated by the association. The unions would be in an untenable position if their members received different wage rates or different fringe benefits, or other different working conditions when working for different contractors. Further, most multi-employer bargaining associations in the construction industry contain “most favored nations” clauses. Such clauses generally state that the union will not enter into an agreement with a contractor or another group of contractors covering the same type of work which provides

more favorable wages and terms of employment than the association agreement without extending the same favorable wages and conditions to contractors who are bound by the association agreement. Therefore, as a practical matter, it is a rare case when a contractor, on its own, can get more favorable agreements than the applicable association agreement.”

In my experience negotiating collective bargaining agreements, everything Mr. Mocerf says is true. On those occasions when I have been able to negotiate a collective bargaining agreement with a construction trade union containing better wage and benefit rates or better terms and conditions than the “master” agreement in the industry, it has been a very special situation in which the contractor either agreed to an initial recognition of the union as the bargaining agent for its employees or had some other major bargaining chip to give to the union. For the everyday contractor who has been doing business as a union contractor for some time, it is virtually inconceivable that it might somehow negotiate a collective bargaining agreement with the union containing any more favorable wage or benefit rate, or any more favorable terms or conditions of employment. Thus the conception that it is a disadvantage not to be able to withdraw from multi-employer bargaining may not, in fact, be any disadvantage at all.

Misconception 5 - Finally, contractors are reluctant to assign bargaining rights because they feel that, in the event the negotiations break down and there is a strike, they might continue working if they have not assigned bargaining rights. Such is highly unlikely. Generally, if there is a strike in the industry, all tradesmen stop work. Moreover, if there is a strike in the area, since unions tend to honor other union picket lines, most projects are probably shut down. Finally, and perhaps most importantly, the contractor thinking along these lines might consider weighing the advantages gained from strength in numbers as opposed to the very slight possibility of gaining some advantage by going it alone in the event there is a strike affecting the rest of the industry. One last trite phrase might summarize this situation – **“We should all hang together or we will certainly hang separately”**.