SAVE THE DATE!

TAUC Leadership Conference 2012

May 15-18
Westin Resort & Spa
Hilton Head Island, South Carolina
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by ROBERT SANTILLO

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ABOUT TAUC
THE ASSOCIATION OF Union Constructors (TAUC) is the pre-
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Over the past few years, there has been a lot of talk about the sudden and unexpected changes in the U.S. economy, not to mention the wild ups and downs of the stock market. Mark Twain’s famous quip, “If you don’t like the weather in New England, just wait a few minutes,” could easily be applied to today’s business climate. All of this uncertainty has led many people to wonder when — or if — the union construction industry will ever regain its footing.

This is dangerous thinking. We cannot lose our perspective and allow the current economic circumstances to define who we are as an industry and what we are capable of accomplishing. We have to look beyond today’s stock performance or tomorrow’s jobs report and remember that while such things can be disruptive, their impact is ultimately temporary. A storm might rage on the surface of the ocean, but hundreds of feet down the waters are calm and the deep currents continue to move in the same direction as always, undisturbed. The same is true for our industry. Certain things remain the same, regardless of the date on the calendar.

Recently, I have been thinking about union construction’s “deep currents” — the foundational principles we can rely on for consistency and strength even when times are tough. There are many, and I’m sure you could add to my list, but in this column I would like to discuss two in particular.

The first is our commitment to safety. In late October, our sister organization, the NMAPC, held its 11th Annual Zero Injury Safety Awards Gala in Washington, D.C., honoring the tripartite efforts of contractors, owner-clients and building trades who reached the pinnacle of job site safety (see our complete coverage on pages 10-16). For calendar year 2010, 62 tripartite teams reported more than 12.7 million injury-free hours, the second highest total in program history. In 2009, more than 10 million injury-free hours were reported, and in 2008, the total was more than 11 million.

Think about those numbers. During the period when our economy has been at its most vulnerable, when millions of people didn’t know if they would have a job the next day, the union construction sector’s commitment to safety has remained as strong as ever. Despite the uncertainty, we haven’t taken our eyes off the ball. The NMAPC’s motto — “Safety, Productivity, Quality, and Strength” — still rings true, and our contractors and union workers remain committed to those core values.

The second unchanging principle is the tripartite relationship itself. Stress can either break up a partnership or bring everyone closer together. In our case, the latter has occurred. As the economy weakened, the tripartite relationship between owner-clients, contractors and unions continued to grow stronger. The challenging business outlook didn’t cause us to point fingers and play the blame game; it only bolstered our resolve to ensure that every member of the tripartite team comes out on the other side of the recession in a position to succeed.

The economic climate could be better, but the “deep currents” that define union construction roll on. We are weathering this storm ... together.
TAUC urges support for Keystone pipeline

Earlier this fall, TAUC joined together with several international unions in voicing support for the TransCanada Keystone XL Pipeline at a rally in downtown Washington, D.C.

The pipeline, which is planned to stretch nearly 2,000 miles from Canada to Texas, has come under fire from many environmental groups and politicians who are worried about its impact on the surrounding land.

Hosted by the Laborers International Union of North America (LIUNA) and attended by members of several other unions, the boisterous rally drove home a simple message: removing regulatory restrictions and allowing the pipeline to be built will result in thousands of new jobs at a time when America could really use them.

“We are here not only to support a pipeline, we are here to support a lifeline for thousands of working men and women,” said LIUNA General President Terence O’Sullivan. “The Keystone XL Pipeline will unlock desperately needed jobs and make America safer by reducing our dependence on [foreign] oil…It will allow us to do what we do best: to build America.”

As for the environmental critics, O’Sullivan added: “We applaud the intense environmental scrutiny of the pipeline, because we too care about our air, water and the environment. We also care about putting green in workers’ pockets, so that we can stop the avalanche of foreclosures, unemployment and broken dreams that are tearing apart our families and crippling our country. We must care for the planet, brothers and sisters, but…we also have to care for the people that are on it.”

According to an independent economic study conducted by The Perryman Group, the pipeline construction project would result in more than $20 billion in new spending in the U.S. economy and increase personal income of Americans by $6.5 billion, along with $585 million in state and local taxes in the states along the route of the proposed pipeline.

Ready to get to W.O.R.K.?

TAUC and NMAPC have teamed up to offer TAUC members and NMA signatory contractors a new way to find additional work.

The new “Work Opportunity Reference Key,” or W.O.R.K. Tool, lets members of the owner community search a sophisticated, highly-detailed database to find qualified signatory contractors for their specific maintenance and construction needs across the United States.

This upgrade to the TAUC and NMAPC websites allows owners to search for NMA contractors and TAUC members by contractor type; type of work performed; states where the contractors work; women/minority status; certifications; OSHA safety information and several other demographic categories. Once the search results are delivered, the owner simply clicks on an individual company for a thorough description of the organization’s capabilities as well as complete contact information — physical address, phone, fax and email. Owners can also view a list of all TAUC members arranged alphabetically.

TAUC and NMAPC are confident that the W.O.R.K. Tool will greatly assist owners in finding the highest quality contractors to perform work on and in their facilities. In addition, it will give signatory contractors a powerful, cost-free way to increase their profile among potential customers.

To get started, simply log on to http://www.tauc.org/work/ today. Owners: just type in your TAUC or NMAPC username and password to begin using the search tool immediately. Contractors: log in with your username and password to update or edit your company’s profile and contact information.
IRS launches voluntary misclassification settlement program

The Internal Revenue Service has launched a new program “that will enable many employers to resolve past worker classification issues and achieve certainty under the tax law at a low cost by voluntarily reclassifying their workers,” the agency said.

The program, dubbed the Voluntary Classification Settlement Program (VCSP), is part of a new “Fresh Start” initiative to help businesses deal with tax responsibilities. It will allow employers the opportunity to get into compliance by making a minimal payment covering past payroll tax obligations rather than waiting for an IRS audit.

“This settlement program provides certainty and relief to employers in an important area,” said IRS Commissioner Doug Shulman. “This is part of a wider effort to help taxpayers and businesses to help give them a fresh start with their tax obligations.”

The IRS explained how the VCSP will work. “Under the program, eligible employers can obtain substantial relief from federal payroll taxes they may have owed for the past, if they prospectively treat workers as employees. The VCSP is available to many businesses, tax-exempt organizations and government entities that currently erroneously treat their workers or a class or group of workers as non-employees or independent contractors, and now want to correctly treat these workers as employees.”

To be eligible, an applicant must:
• Consistently have treated the workers in the past as non-employees
• Have filed all required Forms 1099 for the workers for the previous three years
• Not currently be under audit by the IRS
• Not currently be under audit by the Department of Labor or a state agency concerning the classification of these workers

Interested employers can apply for the program by filing Form 8952, Application for Voluntary Classification Settlement Program, at least 60 days before they want to begin treating the workers as employees.

“Employers accepted into the program will pay an amount effectively equaling just over one percent of the wages paid to the reclassified workers for the past year,” the IRS added. “No interest or penalties will be due, and the employers will not be audited on payroll taxes related to these workers for prior years. Participating employers will, for the first three years under the program, be subject to a special six-year statute of limitations, rather than the usual three years that generally applies to payroll taxes.”

For more information, go to www.irs.gov.

Revised NMA available online

As we mentioned last issue, the National Maintenance Agreements Policy Committee (NMAPC) recently approved revisions to the National Maintenance Agreement (NMA) and the National Power Generation Maintenance Agreement (NPNGMA) that go into effect on January 1, 2012. This marks the first time the Agreements have been revised since 1996.

The NMAPC hopes that these revisions will not only provide contractors and crafts with the necessary tools to remain competitive in the industrial construction, maintenance, repair, replacement, renovation, and modernization industry, but will also foster additional work opportunities by providing our current and future clients with a cost-effective and value-added source for labor-management cooperation, safety, productivity and quality.

There have been several significant changes made to the Agreements. The NMAPC strongly encourages all participants in the Program to familiarize themselves with these changes by going to www.nmapc.org/agreement, reading the information and downloading the appropriate documents.
McCarl’s, a leader among U.S. industrial contractors, is committed to safety, client responsiveness, and working as a team with our union labor partners. This total commitment allows us to provide world class service to our clients in industries ranging from power and chemical to steel and manufacturing. Through diversification of services, we have expanded our expertise in almost every phase of the construction process.

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THE FINANCIAL ACCOUNTING Standards Board (FASB) earlier this fall released a revised set of rules for disclosing an employer’s participation in a multiemployer pension plan. Importantly, these rules do not require participating employers to disclose their withdrawal liability.

FASB’s decision not to include withdrawal liability in the new standard is a victory for construction contractors and other businesses that contribute to MEPPs. TAUC believed the withdrawal liability proposal was seriously flawed because it would have required disclosure of information that was two years out of date, not auditable and ultimately misleading to any end-user of financial statements. TAUC joined with other trade associations to form the Construction Industry FASB Coalition (CIFC) to engage in positive and constructive collaboration with FASB regarding changes to the reporting requirements, and our efforts finally paid off.

FASB also declined to require that employers provide a “point-in-time” estimate of obligations with respect to the underfunded status of individual plans.

“Many of those who commented on the FASB’s proposal on multiemployer plans told the Board that the withdrawal liability would not be an appropriate proxy for an employer’s proportional share of the underfunded status of the plan,” FASB said in a statement. “They suggested that the employer’s share of the underfunded status of the plan can only be determined through the collective bargaining process and they urged the FASB not to require a ‘point-in-time’ estimate of an employer’s obligations with respect to underfunding.”

“Historically, very limited information about these plans has been disclosed, even though they may represent significant potential obligations for many large, unionized industries such as trucking, supermarket chains, and construction firms,” said FASB Chairman Leslie F. Seidman.

“The enhanced disclosures will ensure that shareholders in companies that participate in these plans, workers who depend on them for their retirement benefits, as well as lenders and others, will have more information regarding the employers’ pension commitments and the financial health of the plans.”

IMPORTANT DEADLINES

Contractors should keep in mind two important dates. For public entities, the enhanced disclosures will be required in fiscal years ending after December 15, 2011. For nonpublic entities, the enhanced disclosures will be required in fiscal years ending after December 15, 2012.

Summary of changes

Although withdrawal liability was nixed, many other changes were approved. The revised accounting standard will include the following disclosure requirements:

• The amount of employer contributions made to each significant plan and to all plans in the aggregate.
• An indication of whether the employer’s contributions represent more than five percent of total contributions to the plan.
• An indication of which plans, if any, are subject to a funding improvement plan.
• The expiration date(s) of collective bargaining agreement(s) and any minimum funding arrangements.
• The most recent certified funded status of the plan, as determined by the plan’s so-called “zone status,” which is required by the Pension Protection Act of 2006. If the “zone status” is not available, an employer will be required to disclose whether the plan is: less than 65 percent funded; between 65 percent and 80 percent funded; greater than 80 percent funded.
• A description of the nature and effect of any changes affecting comparability for each period in which a statement of income is presented.
WASHINGTON, D.C. – The National Maintenance Agreements Policy Committee, Inc. (NMAPC) is pleased to congratulate the winners of the 11th Annual Zero Injury Safety Awards (ZISA).

The ZISA Gala took place Wednesday, Oct. 26 at The National Building Museum in Washington, D.C. This year 62 winners were honored, accounting for more than 12.7 million injury-free hours worked in calendar year 2010 (view the complete list of winners on pages 14-15). This marks the second-highest total in the history of the ZISA program.

Each Zero Injury Safety Award recognizes an alliance between owner-clients, signatory contractors and local and international unions who worked together in a tripartite fashion to achieve zero injuries on their projects.

“We are gathered here tonight to honor the best of the best,” NMAPC Impartial Secretary and CEO Steve Lindauer told the crowd. “Their hard work, cooperation and dedication to the zero injury philosophy has proven once again that union construction is the safest and best option on the market.”

The highest honor of the evening went to The State Group Industrial (USA) Limited (contractor), Alcoa Inc. (owner-client) and the Southwestern Indiana Building Trades Council (labor). This tripartite alliance was awarded the ZISA Silver Star Award for more than 817,000 injury-free work hours performed at the Warrick Generating Station in Newburgh, Ind. Six other tripartite teams also received Silver Star Awards, which are given to projects that have documented between 500,000 and 999,999 hours worked without a recordable injury.

This year’s top award in the Bronze Star category, for injury-free projects between 200,000 and 499,999 hours, went to Superior Construction Company (contractor), BP Products North America (owner-client) and the Northwestern Indiana Building and Construction Trades Council (labor) for 485,517 injury-free work hours.
hours worked at the BP Whiting Refinery in Whiting, Indiana. Eleven other tripartite teams also received Bronze Star Awards.

The Certificate of Merit category recognizes projects that have documented between 50,000 and 199,999 work hours performed without a recordable injury. This year’s top Certificate of Merit winners were EMCOR Hyre Electric Co. of Indiana (contractor), ArcelorMittal (owner-client) and IBEW Local Union No. 531 (labor), who together achieved 198,774 injury-free work hours at the Burns Harbor Plant in Burns Harbor, Indiana. Forty-two other tripartite teams also received Certificates of Merit.

The keynote speaker for the evening was Jim Morris, the real-life inspiration for the blockbuster 2002 movie “The Rookie,” starring Dennis Quaid.

To motivate his rag-tag high school baseball team, Morris, then a 35-year-old schoolteacher, made a bet that he would try out for the big leagues if his team won a district championship. When Morris’ team won, he followed through on his promise, going to a tryout where he threw 12 consecutive pitches at 98 miles per hour! Three months later, in front of his high school team, Jim achieved his dream of pitching in the major leagues by striking out the first hitter he faced.

Morris regaled the audience with his amazing tale of perseverance and hard work. He expressed admiration and deep respect for the ZISA winners, and drew many parallels between what it takes to be an elite major-league baseball player and the effort involved in creating and maintaining an injury-free jobsite. After his speech, Morris signed free ZISA souvenir baseballs for the attendees.

Be sure to check out our ZISA image gallery on the following two pages. If you didn’t attend this year’s event, make plans now to attend our next gala in October 2012! Check the ZISA website at www.nmapc.org/zisa for more information.
SCENES from the 2011
Zero Injury Safety Awards Gala
11th Annual NMAPC Zero Injury Safety Award Winners

**Zero Injury Plaque Silver Star**
- The State Group Industrial (USA) Limited
- Alcoa Inc.
- Southwestern Indiana Building Trades Council
  - 817,591 Work Hours
  - Warrick Generating Station
  - Newburgh, IN

**Zero Injury Plaque Bronze Star**
- Superior Construction Company, Inc.
  - BP Products North America, Inc.
  - Northwestern Indiana Building Trades Council
    - 485,517 Work Hours
    - Whiting Refinery
    - Whiting, IN

- Chapman Corporation
  - Allegheny Energy Supply Co.
  - Pittsburgh Building Trades Council
    - 269,451 Work Hours
    - Hatfield's Ferry Generation Station
      - Masontown, PA

- McColl’s Inc
  - PPL Corporation
    - Central Pennsylvania Building Trades Council
      - 253,725 Work Hours
      - PPL Montour
      - Washingtonville, PA

- Enerfab Corporation
  - Ohio Valley Electric Corporation
    - Boilermakers Local Union No.105
      - 516,000 Work Hours
      - Kyger Creek
      - Cheshire, OH

**Zero Recordable Injury Certificate of Merit**
- EMCOR Hyre Electric Co. of Indiana, Inc.
  - ArcelorMittal
- IBEW Local Union No. 531
  - 198,774 Work Hours
  - Burns Harbor Plant
  - Burns Harbor, IN

- M & O Insulation Company
  - BP Products North America, Inc.
  - Insulators Local Union No. 17
    - 189,847 Work Hours
    - Whiting Refinery
    - Whiting, IN

- Norris Brothers Company, Inc.
  - Alcoa Inc.
  - Cleveland Building Trades Council
    - 177,723 Work Hours
    - Alcoa Forged and Cast Products
    - Cleveland
    - Cleveland, OH

- McColl’s Inc.
  - AK Steel
    - Butler-Venango Counties Building Trades Council
      - 176,425 Work Hours
      - Butler Works
      - Butler, PA

- APCOM Power, Inc.
  - GenOn Energy
    - Boilermakers Local Union No. 154
      - 164,853 Work Hours
      - Seward Generating Station
      - Seward, PA

- CBI Services, Inc.
  - UGI Energy Services, Inc.
    - Reading Building Trades Council
      - 153,698 Work Hours
      - Temple LNG Plant
      - Temple, PA

- Enerfab Corporation
  - American Electric Power
  - Tri-State Building Trades Council
    - 152,929 Work Hours
    - AEP Mountaineer Plant
    - New Haven, WV

- Chapman Corporation
  - United States Steel Corporation
    - Pittsburgh Building Trades Council
      - 140,992 Work Hours
      - Edgar Thomson Works
      - Braddock, PA
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Industrial Contractors, Inc.
International Union of Painters & Allied Trades
Ironworker Management Progressive Action Cooperative Trust
Kvaerner North American Construction Inc.
LIUNA Tri-Funds
Minnotte Contracting Corp.
National Electrical Contractors Association & the International Brotherhood of Electrical Workers
Shelby Mechanical, Inc.
Solid Platforms, Inc.
Teamsters International Union
The State Group Industrial (USA) Limited
United Association International Union

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Gribbins Insulation
GVH Environmental
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Norris Brothers Co.
Northwestern Indiana Building & Construction Trades Council
Roofers International Union
Sheet Metal Workers International Union

Thank You
Since the NEA and NMA were first created, workplace safety has been a top priority. Throughout the 1970s and 1980s, the NEA participated in numerous dialogues with the Occupational Safety and Health Administration (OSHA) about various safety issues and influenced the development of several major OSHA regulations. But the NMAPC took things to a new level at the beginning of the new millennium with the creation of the Zero Injury Safety Awards (ZISA). Since then, ZISA has become synonymous with the highest achievement in industrial safety. NMA contractors, owners and union workers have consistently achieved safety records that were once considered to be nothing more than a pipe dream: zero recordable injuries on some of the largest and most complex industrial construction and maintenance projects in the country.

The evolution toward a zero injury safety culture began in the mid-1980s. Prior to that time, “Most people dealt with safety with their own customized approaches,” recalled Emmitt Nelson, the veteran safety consultant who pioneered the use of the zero injury concept. “The systems were all very personalized, and when you personalize something, you get as many different versions as you have people contributing.” As an executive at Shell Oil with responsibility for contractor safety, Nelson said he fell into the same trap as his colleagues. “We would basically demand that workers be safe without regard to the interpersonal relationships that build cultures and help people honor and respect one another. Our attitude was, ‘You work safe or you’re going to be fired, and if you get injured, that’s your fault.’”

Things started to change when owner companies — many of which used the NMA on a regular basis — began to realize the true cost of contractor safety nonperformance, which often ran into the tens of millions of dollars annually. Owners who in the past had taken a hands-off approach to the safety standards of their contractors for various legal reasons now began to get more involved, realizing that the potential cost savings outweighed the risk of getting involved in tricky labor disputes. Leaders in the industrial construction and maintenance fields began studying the methods of those companies that managed, seemingly against all odds, to consistently complete large projects without a single employee injury.
Finally, in 1999, the NMAPC decided to start recognizing industrial projects that were completed with zero injuries as a way to emphasize the quality of union construction. Nelson, in conjunction with the NMAPC Safety and Health Subcommittee, drew up the guidelines for safety recognition. Soon thereafter, the Zero Injury Safety Awards were born.

“We didn’t think ‘zero injury’ was attainable or possible,” Brent Booker, president of the NMAPC, Inc. and director of the construction department at the Laborers International Union of North America, recalled in 2010. “It’s a reality now. We’ve now done over 80 million man-hours under the [NMA] program with zero injuries, which I think is quite an accomplishment for all involved.”

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—Brent Booker, NMAPC President

“I can remember when contractors and owners counted fatalities instead of recordable injuries,” added Bob Hoover, vice president of Kvaerner NAC and management co-chair of the NMAPC. But today, a paramount focus on safety “is just the way you have to do business,” he added. “If you can’t be safe, if you can’t develop a safety culture within your organization, if you can’t lead safety within your organization, you’re not going to be in business,” Hoover said.

“Safety is an incredibly important aspect of what we do,” noted TAUC CEO Steve Lindauer. “The owners demand it, the contractors expect it, and the family members of the workers who go out on that job site pray for it every day.”

BLUE-COLLAR DIGITAL

As the first decade of the new millennium progressed, it was only natural that the NMAPC continued to evolve. “The NMA is a living document, and the NMAPC itself is a never-ending work-in-progress,” Lindauer said. So in 2004, the organization jumped on board the digital highway and became the first project labor agreement in the country to launch a comprehensive business-to-business website for its users. It was a quantum leap forward; for the first time, owners, contractors and labor unions could log in and conduct business in minutes that would normally have taken days or weeks in the pre-computer era of faxes, telegrams and snail mail.

“In the old days, there was so much paperwork going back and forth between our headquarters, the contractors and the international unions, many organizations literally wore out their fax machines and had to buy new ones every year or so,” Lindauer recalled. “They were just getting crushed with the paperwork, so the NMAPC stepped up.”

With the new website in place, contractors could now notify unions electronically when requesting work under the NMA, and the unions could reply online instantaneously with a “yes” or “no.” This was a huge relief for the unions, because it wasn’t unusual for some crafts to receive hundreds of requests for work from contractors each week during construction boom times. The administrative support staff needed to keep up with all of the resulting paperwork resembled a small army. By migrating to an online web-based system, requests could be dealt with quickly and efficiently — literally with the click of a mouse button. Online payment of NMA fees was introduced as well, and contractors also used the website to file for site extensions requests (new work) and report their work hours. Customized home pages for each signatory contractor, owner and labor union were created, allowing each user to easily keep track of the dozens (if not more) of NMA jobs underway at any one time.

A NEW ERA

The mid-2000s were a time of transition and optimism at the NMAPC. In 2006, Noel Borck retired as impartial secretary after 20 years. He was succeeded by Lindauer, who had first started working for the committee and the association in the late 1980s.

As Lindauer took over the reins from Borck, another milestone was reached: the number of hours worked under the NMA exceeded two billion. To put that in perspective, it took more than 20 years for the first billion hours to be worked under the Agreement; that number was doubled in just over a decade, another tribute to the remarkable job done by the committee, its signatory contractors and unions.

In 2007, the NEA formally changed its name to The Association of Union Constructors (TAUC), but still maintained a close-knit relationship with the NMAPC. Legally, the two organizations are separate entities, but they share the same office space, and employees allocate their time between the two organizations. Also, all signatories to the NMA are automatically enrolled as regular members of TAUC.

It was fitting that in 2011, the 40th anniversary of the Agreements, the NMAPC once again found itself hard at work on a new set of revisions. A lot had changed in the industry since 1996, and both labor and management came up with a list of proposed “tweaks” to the system. Many of the interpretations collected in the Book of Decisions were analyzed, as well. The revised Agreement and associated materials become effective January 1, 2012.

“Moving into the 21st century, we realized that an old 1996 model just wasn’t going to be able to keep up,” Lindauer said. “Our goal was to stay flexible and keep the NMA nimble and relevant. The Committee felt the Agreement as a whole is still very solid and sound. But we also recognized that it was incumbent upon us to look at it in the context of where our country and our industry are today.”

Looking ahead to the next four decades of the NMA, Lindauer is optimistic, even in the face of the current sour economic news. “Everything moves more quickly now. We’re in a global economy, but without a solid industrial manufacturing base in the U.S., we’ll find ourselves in deep trouble,” he said. “I’m confident we’re going to find a cost-effective way to maintain that base — and I’m equally confident that the NMA is going to be a big part of the solution, just as it has been for the past 40 years.”
“IF YOU HAVE an erection lasting more than four hours, contact your physician immediately.”

Unless you’ve been living under a rock, those words are familiar to you and millions of other Americans as part of the marketing and advertising associated with various medications. In fact, it is part of a disclaimer about the potential downside of using them. As a business strategist and (thankfully) a guy not yet using those products, I want to buy a beer for the genius who coined that phrase. That simple sentence summarizes brand identity and client fulfillment in ways that we can only imagine for union construction.

What makes people buy any brand? First and foremost, it is their confidence in the value proposition. What you provide will not sell unless that value is replicated in the mind of the buyer. For purposes of this article, I take the position that the “union construction” brand is at a minimum tarnished and, at worst, completely broken. There is a profound lack of confidence in the union value proposition and a mass amount of negativity and misunderstanding in the marketplace.

The “union construction” brand is at a minimum tarnished and, at worst, completely broken. As well, the turmoil surrounding non-construction unions is also negatively impacting the brand. The general perception of the owner community (from residential to mega-industrial projects) is “excessive cost and complications for above-average value.” Simply put, the brand identity of the last 30 years has been more about the “serious side effects” of using union construction rather than the significant benefits and value of a very sophisticated, if imperfect, business model.

On to our branding lesson. The amazing beauty of the “four-hour warning” noted above is that it takes a significant negative attribute and turns it into a positive. Just think about it. If you did have that “get-it-going” challenge, how upset are you going to be with an “over-performance”
problem? You are no longer questioning cost; you just want to know where to get it. If a four-hour “cure” is the worst thing that you have to worry about, my only question is, where the hell do I sign up?

The lesson is simple: over-performance is not a bad thing for your brand. What would union construction’s over-performance warnings sound like? Try these:

• Projects may be completed early, resulting in unanticipated positive beneficial use
• Productivity may exceed all expectations and create excessive profits
• Cooperation, coordination and communication may result in significant decreases in blood pressure
• Jobs may be too safe and result in lower insurance costs.

The Building & Construction Trades Department, the individual building trades unions and many major contractor associations are engaged in serious efforts to improve the union construction brand. Union leaders are spending more time with owners and end-users than in the past. Everyone across the industry understands that without a brand advantage, there is no way to compete with lower-cost competitors.

The quantum leap that every reader of this article needs to fully understand is that the universal brand advantage of union construction depends on three things:

1. Creation of economic and operational value in excess of and superior to the competition
2. Consistency in delivery and in meeting client needs, especially at the construction site
3. A market-centric approach to the brand and its price, positioning and promotion

It is on the last point that I want to place the greatest emphasis. The market endorsement of our brand will decide our economic fate. What we think or want is totally irrelevant. A myopic approach that puts self interest before market interest guarantees failure. A limited horizon view or economic formula that places self needs over client needs guarantees market share erosion. A market promise of “higher value for higher cost” that is broken is a promise best not made at all. The future rides on what the clients and the market decide. The illusion that it is any different will lead us down the road to oblivion.

Every single stakeholder providing “union construction services,” including every craft worker, must understand that you are either contributing to the significant improvement of our brand or you are responsible for its demise. There is no in-between. Over-performance needs to become the norm. There is no magic blue pill to save us. Here is what the warning label says to us: addressing dysfunction and underperformance is a challenge that must be faced now.

Mark Breslin is a strategist and author who focuses on improving organizational performance, leadership and work ethic. Known for his blunt and uncompromising style, he has addressed more than 500 audiences and well over 200,000 leaders, managers and craft workers. He is the author of Survival of the Fittest, Million Dollar Blue Collar and Alpha Dog: Leading, Managing & Motivating in the Construction Industry.
Imagine you’re a supervisor on a construction site. One day you warn a group of employees who aren’t following company policy about where to take their coffee breaks. One of those employees threatens that things will “get ugly” if you attempt to discipline him for the infraction, and another tells you to “bring [your] boxing gloves.” What do you think would — and should — happen next? Before you answer, consider the following real-life example that recently worked its way through the National Labor Relations Board (NLRB) and all the way to the D.C. Circuit Court of Appeals.

The current NLRB has repeatedly taken some very strong pro-labor actions and issued some very strong pro-labor decisions.

In 2007, Kiewit Power Constructors Company began working as a subcontractor, providing the design and construction of a turbine and related structures for a coal-fired power plant in Weston, Missouri. Kiewit employed 22 IBEW electricians on the project. The collective bargaining agreement provided for only a one half-hour lunch break at noon, but Kiewit allowed an additional 15-minute break at 9:30 a.m. and another at 3:00 p.m.

The electricians typically took their breaks in a “dry shack,” a trailer located outside the turbine building that allowed them to remove their protective equipment, something they could not safely do inside the turbine building because of the danger from ash and falling objects. As construction progressed, the distance between the dry shack and the job sites increased and the workers began leaving their jobs earlier so that they could spend the full 15 minutes inside the dry shack. As a result, the morning and afternoon breaks stretched to between 25 and 30 minutes. Kiewit felt that it was losing productivity, and it announced that electricians were to take breaks in the turbine building rather than the dry shack, a practice described as “breaking in place.” The union objected, and the electricians continued taking their breaks in the dry shack. Kiewit decided to issue individual oral warnings to any electrician or foreman who violated the policy. Under the company’s rules, employees received an oral warning for the first violation of a policy, a written warning for the second violation and suspension or termination for a third violation.

Following a morning break, which the electricians took in the dry shack contrary to Kiewit’s policy, the Kiewit field superintendent, accompanied by a union steward, visited each job site to give the electricians the company’s warning orally. The union
The NLRB Process

INJUNCTION
Regional Director must ask district court for temporary restraining order in unlawful boycott or certain picketing cases.

INVESTIGATION
Regional Director determines whether formal action should be taken.

CHARGE
Filed with Regional Director, alleges unfair labor practice by employer or labor organization.

COMPLAINT AND ANSWER
Regional Director issues complaint and notice of hearing. Respondent files answer in 10 days.

HEARING AND DECISION
Administrative Law Judge presides over trial and issues a decision recommending either (1) order to cease and desist from unfair labor practice and affirmative relief or (2) dismissal of complaint. If no timely exceptions are filed, the Administrative Law Judge’s decision becomes the decision and order of the Board.

DISMISSAL
Board finds respondent did not commit unfair labor practice and dismisses complaint.

REMEDIAL ORDER
Board finds respondent committed unfair labor practice and orders respondent to cease and desist and to remedy such unfair labor practice.

COURT ENFORCEMENT AND REVIEW
Court of appeals can enforce, set aside or remand all or part of the case. U.S. Supreme Court reviews appeals from courts of appeals.

WITHDRAWAL – REFUSAL TO ISSUE COMPLAINT – SETTLEMENT
Charge may, with agency approval, be withdrawn before or after complaint is issued. Regional Director may refuse to issue a complaint; refusal (withdrawal of charge) may be appealed to General Counsel. Settlement of case may occur before or after issuance of complaint (informal settlement agreement subject to approval of Regional Director; formal settlement agreement executed simultaneously with or after issuance of complaint, subject to approval of Board). A formal settlement agreement will provide for entry of the Board’s order and may provide for a judgment from the court of appeals enforcing the Board’s order.

The steward told the electricians at each job site that neither he nor the union agreed with the change in policy. When the field superintendent and the union steward came to the job site where the two workers in question were working, another electrician asked if employees would receive a written warning if they took their breaks in the dry shack that afternoon. “Yes,” answered the Kiewit field supervisor. One of the employees responded that he had been out of work for a year and that if he got laid off, “it’s going to get ugly and [the field superintendent] better bring [his] boxing gloves.” The other employee told the field superintendent that he had been out of work for eight months and repeated the comment that “it’s going to get ugly.”

The field supervisor left the work site and reported that he had received a physical threat. Several Kiewit managers met and then agreed that the two employees should be fired for violating the company’s policy of zero tolerance towards workplace violence.

The case was first considered as a grievance under the applicable collective bargaining agreement, then by an NLRB Administrative Law Judge. All agreed that no employee was entitled to physically threaten a supervisor with bodily harm, and that the Kiewit field superintendent felt he was being threatened with bodily harm. Furthermore, at the grievance meeting, union representatives agreed that the company had not violated the National Labor Relations Act by firing the employees. This conclusion was reached after hearing actual evidence of what had happened and listening to the live testimony of the witnesses who were there. The ALJ, which also listened to live testimony of the witnesses who were present, reached the same conclusion and found in favor of Kiewit.

But it wasn’t over. The employees appealed the ALJ’s decision to the full NLRB. As part of the appeals process, the board reviews the record of the proceeding before the ALJ, but it neither takes testimony nor develops new evidence. The NLRB interpreted the facts quite differently than the ALJ, concluding that the statements made by the two electricians were merely an outburst and understandable in the context of when and where they were made. The board said it was reasonable in this case for employees to respond briefly, spontaneously, and verbally to the supervisor when he told them they would be disciplined if they continued to take long breaks. In the end, the board decided that the statements were not a sufficient threat to justify the employees being fired.

The case was appealed by Kiewit to the D.C. Circuit Court of Appeals, where it was heard by a panel of three judges. Two judges waffled. They held that the NLRB is an administrative agency that reached a decision on a matter within its expertise. They ruled that the law says that a Court of Appeals cannot reverse an administrative agency where there is substantial evidence on the record that would support the administrative agency’s opinion, even if the Court feels that the agency’s opinion is wrong. Therefore, they concluded that they had to affirm the decision of the NLRB and order the employees reinstated with back pay.

The third judge, Judge Karen LeCraft Henderson, filed a strong dissent. Judge Henderson questioned how the NLRB, without hearing the evidence, could reach a conclusion contrary to the conclusion made by those attending the grievance meeting or the ALJ, which had actually heard the evidence. She argued that the NLRB did not have the right to reverse the ALJ on the record in front of the court, and she would have reversed the decision of the NLRB and found that the company had the right to fire the employees.

The current NLRB has repeatedly taken some very strong pro-labor actions and issued some very strong pro-labor decisions. Employers must make sure that construction supervisors are properly trained to take appropriate actions on the job site within the parameters of both the collective bargaining agreement and the National Labor Relations Act. It should be recognized that actions that may have been “legal” under prior boards may not be interpreted the same way by the current NLRB.

Steve Fellman is president of GKG Law in Washington, D.C. He is also general counsel to The Association of Union Constructors. He can be reached at sfellman@gkglaw.com.
Getting down to specifics

by TONY DOWNEY

HARDLY A DAY goes by in our industry when we don't engage in planning to some extent. We create business plans, marketing plans, project execution plans, recovery plans, emergency plans and, yes, safety plans. Many work hours are dedicated to developing, testing and refining them. But how often are these plans actually implemented on the jobsite?

Expecting that a “one-size-fits-all” safety manual is going to be an effective tool on each and every work site is a myth, plain and simple.

The key principle of the planning process is to develop a road map of sorts — to help us know where we are going and how we will get there. It's an essential part of any successful company. But when a project stumbles or struggles and we do a “deep dive” into the root cause of the problem, we often find that the road map — either in whole or in part — wasn’t being followed. Unfortunately, this can happen in the realm of safety. All companies have corporate safety manuals that contain guidance documents, safe work procedures, corporate policies, work rules, check lists, incident reporting requirements, forms and many other worthwhile tools. However, expecting that a “one-size-fits-all” safety manual is going to be an effective tool on each and every work site is a myth, plain and simple.

The best tool for ensuring safety is a Site Specific Safety Plan. This type of plan describes in detail the steps that will be followed at a particular work site to safeguard the life and physical welfare of every employee working on the project. Just like no two projects are the same, no two safety plans should be the same. A good Site Specific Safety Plan must address the specific needs of each unique project or task.

A Site Specific Plan can begin with a Statement of Commitment from the Site Management Team to perform every task safely. It should also include language related to the expectation of safe work performance by each employee on the project.

Additional items that can enhance a strong Site Specific Safety Plan include:

- A personal message from the Senior Site Management Team member. This is a very effective tool and should not only be included in the plan, but also shared at Orientation Training Sessions and posted on the job site.
- Task-specific Safety Training to include any necessary requirements of the work scope.
- Human Performance Tools such as peer checking and behavior observations.
- Pre-Task Safety Planning tools such as a Job Safety Analysis or Job Hazard Analysis.
- Risk Assessment tools and documents
- Hazard Assessment Tools and documents
- Measurement tools, checklists
- Safe Work Recognition Processes
- Incident Reporting and Investigation Processes
- Emergency Evacuation Processes and Procedures
- Site Safety Committee Process
- Necessary Personal Protective Equipment
- Additional Safety Equipment and Tools

Here’s the bottom line: if no one expects a safety plan to be vigilantly followed on the jobsite, it’s not worth the paper it’s printed on. That’s why it’s so important to measure the effectiveness, quality and completeness of your Site Specific Safety Plans. What gets measured gets done. Quality plans will lead to quality work performance that is on schedule, within budget and, most importantly, free from injuries.

Tony Downey is the director of safety for Day & Zimmermann NPS, Inc. and chairman of TAUC Safety and Health Committee. Day & Zimmermann is a TAUC Governing Member.
Fit for duty:
A concept whose time has come

by GARY BOHN

As Chairman of the TAUC Labor Committee, I have written quite a bit about various ways in which contractors and unions can work together to make union construction more competitive in the marketplace. We don’t want to have to beg and cajole customers into using our services every now and then when there’s no viable alternative; ideally, we want owner-clients beating down our doors, eager to sign up with us because they know we offer the best quality and value for their construction dollar.

Granted, we have a long way to go to achieve such a goal, and no one — certainly not me — is viewing our current situation through rose-colored glasses. Times are tough, and non-union competition is even tougher. Many owner-clients have valid concerns about “building union,” and no doubt can tell you a few horror stories about their past experiences with various locals. But rather than embark on a nationwide apology tour and beg forgiveness for past sins (which wouldn’t do much good anyway), what can we, as contractors and unions, do to make our services more attractive to a skeptical customer base, right here and right now?

I believe that in order for union construction to have any reasonable chance of gaining market share in the near future, contractors and the various trades must come together with bold new initiatives. One example that many in our industry believe has merit would be to implement “fitness for duty” requirements for union construction workers.

The “fit for duty” concept is simple. In a nutshell, it means that contractors and unions work together to ensure that every worker hired for a job can perform his or her essential functions in a safe, productive and efficient manner. The employee shouldn’t have any mental or physical impairment that would interfere with competent job performance. Impairments can be caused by any number of factors, including alcohol or substance abuse; fatigue; physical illness; mental stress; or other factors that would restrict their ability to do everything a particular position requires.

I believe adding fit-for-duty requirements to the hiring and screening process in a legal, non-discriminatory manner would make union construction providers more attractive to potential customers. It would further demonstrate organized labor’s commitment to supply only the very best skilled workers to owners’ projects. Over time, a fit-for-duty system would also tend to reduce costs and lost productivity due to injuries, by pre-selecting only those workers who are mentally and physically prepared for the challenges of a particular skill set required for a jobsite. Additionally, such a program would benefit union employees by giving them an incentive to stay healthy and, in some cases, protecting them from engaging in potentially unsafe work given their particular fitness profile.

Let’s talk nuts-and-bolts for a moment. How might a fit-for-duty program work in the real world? There are many different approaches, but the first step would be for unions, in collaboration with their partner contractors, to sit down together and establish a list of trade-specific “essential functions” that each worker must meet, a set of uniform metrics agreed upon by all parties. To show their support for the concept, international unions could include these fitness requirements in their written standards of excellence codes. Of course, flexibility is important as well; the fitness metrics could be further tailored to meet specific regional, project or industry requirements. One way to minimize extra time and cost would be to integrate fitness screening into an employee’s annual physical exam. In order to be dispatched to a project, every employee would need to have an up-to-date fitness card issued by their union. Another potential cost-saver: screening for certain fitness metrics, like drug testing, are already provided for under most standard union benefit packages.

As a former craftsman, I know that some of my union brothers might be a little skeptical of these ideas. I also understand that a union local’s primary goal is to secure work for as many members as it possibly can, week in and week out. We need to look at “fit for duty” and other similar concepts that we have discussed in prior articles as a way to restructure our “brand” for unionized construction and consider how these types of initiatives can benefit us in the long term. The building trades craftsmen I have met over the years would much rather work than sit on the out-of-work list at the hiring hall. One way to get people back to work is for the leadership in both the unions and contractor associations to move forward quickly on a unified effort to differentiate our product from our competitors.

In order to survive, contractors and unions must prove that together, we can provide our clients with the best workers for the job — not just any workers, but the best. This can only be done if we think long and hard about what “fit for duty” really means and prove to the marketplace that we are serious about taking additional steps as required to ensure a high-quality job done safely, on time and within the budget.
How local associations help drive national issues

BY WILLIAM LIGETTI

ONE OF THE benefits of being chairman of TAUC’s Local Employer Organization (LEO) Committee is that I get to witness firsthand how our LEO members advocate for positive legislative and regulatory changes that will benefit union construction at the local level. In this column, I’d like to “pull back the curtain” so that everyone can see what our LEOs are doing.

By now, most of you have probably heard about the Financial Accounting Standards Board’s (FASB) efforts to propose new accounting rules for contractors who participate in multiemployer pension plans (see story, Page 9). It was clear that if it went through, the proposal would have dire consequences for contractors. The TAUC staff coordinated with a number of like-minded organizations at the national level to persuade FASB to jettison its proposal, and also coordinated with LEOs across the country to mobilize a grassroots effort to educate folks about the dangers of the proposed accounting standards. LEO members wrote letters to FASB expressing their concern, and contacted their members’ and trusts’ banking institutions, surety bond providers, and other stakeholders, all of whom helped convince FASB that their proposal was not good for our industry. The Board listened, and as a result of our efforts, the changes were scrapped.

Another issue that has recently popped up is the sunset of the Pension Protection Act of 2006, set to take place at the end of 2014. TAUC is currently participating in the Retirement Security Review Commission being spearheaded by the National Coordinating Committee for Multiemployer Plans, and is keeping its membership abreast of what is transpiring. Importantly, TAUC is also soliciting input from LEO members, many of whom participate as pension plan trustees in their local areas. A secure retirement is a fantastic benefit that our union contractor members have provided for their union employees for decades. It’s also a great way to attract new skilled workers into the trades. However, the system is currently flawed and we have to change it in a way that will make it more attractive for individuals to become union contractors while ensuring that union construction in general remains a cost-effective and competitive product for our customers.

LEO members have also been very active in the annual legislative conference hosted by TAUC and five other union contractor trade associations. The event gives us an opportunity to listen to our representatives and others within government provide updates on issues that impact our businesses and industry. We meet with our state congressional representatives, or their staffs, in their offices on Capitol Hill, and push for legislative fixes that can help union contractors. The next Quality Construction Alliance National Issues Conference is set to take place May 2-4, 2012 at the Capitol Hilton in Washington, D.C. Mark your calendars and plan to attend, as your voice needs to be heard!

If anyone in a leadership position at a local union trade association is interested in learning more about TAUC and the benefits of being a Local Employer Organization member, simply go to www.tauc.org, or feel free to contact me at wligetti@aol.com.
Bob’s tireless efforts in the field of construction industry economics and statistics have helped to support the unionized construction industry and, by extension, TAUC member contractors. As the head of CLRC since its formation, he guided the development of a comprehensive database of labor costs and did a great deal of research in the areas of union market share, labor supply and measures of international construction costs.

In addition to his work at CLRC, Bob also represented the construction industry on the Business Research Advisory Council of the Bureau of Labor Statistics for more than 20 years.

His leadership and experience will be greatly missed.

TAUC wishes Bob the best in his retirement!
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