ZERO INJURY SAFETY AWARDS
A DECADE OF EXCELLENCE

DRIVING HOME THE SAFETY MESSAGE
PROGRESS, PRICE AND THE EVOLUTION OF BARGAINING
2011 LEGISLATIVE PRIORITIES FOR TAUC MEMBERS
PROTECTING LIVES AND REDUCING COSTS: 
TWO DECADES OF CONSTRUCTION SAFETY EXCELLENCE

For more than 20 years, the Laborers’ Health and Safety Fund of North America (LHSFNA) has worked to encourage good health and safe work conditions by helping contractors maintain safe, productive job sites. The Fund recognizes that a healthy Laborer is a productive Laborer and that health and safety are important both on and off the job.

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ABOUT TAUC

THE ASSOCIATION OF Union Constructors (TAUC) is the premier national trade association representing the 21st Century union construction industry. TAUC consists of more than 2,500 union contractors, local union contractor associations and vendors in the industrial maintenance and construction field. We demonstrate union construction is the best option because it is safer and more productive, and it provides a higher-quality and cost-competitive product.

OUR MISSION

OUR MISSION IS to act as an advocate for union contractors, advancing the cause through an educated and action-driven membership. We aim to enhance labor-management cooperation, workplace safety & health and collaboration among construction users with the greater goal of making union contractors more competitive in the marketplace.

ADAPTATION IN THE 21ST CENTURY

THE ASSOCIATION OF Union Constructors evolved from the National Erectors Association, which was founded in 1969 by the leading union steel erectors in the construction industry. Over the years, membership grew to include all types of union contractors, and, consequently, the name and structure of the association was changed to The Association of Union Constructors in 2007. The new association reflects the changing face of the construction industry and more accurately reflects the growing diversity of TAUC members.

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Staying focused on safety during tough times

The slumping economy is all the more reason for everyone, from management to field workers, to become involved in reviewing and improving safety processes. Eventually the economy will improve, and when it does, those who are best prepared will have a significant competitive advantage. Here are a few things to keep in mind.

**Catch up on training.** Despite the slowdown, this is a great opportunity for employees to refocus on safety training and enhance their skills. Having your key people trained and prepared when business is brisk again keeps your team thinking proactively about safety. There are numerous safety training and education opportunities available, from baseline courses like the OSHA 10-Hour and 30-Hour classes to specialty classes such as confined space, lead, asbestos, Hazardous Waste and Emergency Response Operations (HAZWOPER), radiation training and more. Employers can also provide specialized training on a specific piece of equipment. The knowledge gained will not only help your employees work safer, but will also provide a longer lifespan for that particular tool or piece of equipment.

**Maintain daily field safety meetings.** Out in the field, it’s easy to get caught up in all of the negative media reports about unemployment and layoffs. If we’re not careful, this can distract everyone from the task at hand, and in our industry, distraction is...

Eventually the economy will improve, and when it does, those who are best prepared will have a significant competitive advantage.
The main components of this process is making sure your safety equipment is in top condition. Contractors spend a great deal of money annually on safety equipment. Better care can extend its life as well as defer replacement costs. If there isn't enough work at a particular time, most of that equipment will be readily available. Take advantage of the down time to inspect and make sure each piece is being used for its intended purpose.

Check your safety equipment. Momentary lack of work can also present a great opportunity for leaders to revamp their company's safety program. One of the main components of this process is making sure your safety equipment is in top condition. Contractors spend a great deal of money annually on safety equipment. Better care can extend its life as well as defer replacement costs. If there isn't enough work at a particular time, most of that equipment will be readily available. Take advantage of the down time to inspect and make sure each piece is being used for its intended purpose.

Leverage technology. Even if your corporate belt tightening includes restrictions on travel, that doesn't mean you have to miss important safety events and presentations. Several professional safety organizations are using technology to their benefit. A number of meetings have been held via conference call, allowing safety personnel the opportunity to share ideas and communicate with each other. Webinars have also become popular methods for people to learn remotely and stay abreast of the latest safety trends. Plus, they are usually available at a low cost, making it worth the time to sign in and take the course—and with projectors, the webinar can be broadcast on the big screen to allow a roomful of people to become engaged in the training program.

In conclusion, I'm happy to report that the union construction industry's ongoing commitment to safety during tough times was on full display on October 28, when the NMAPC held its 10th annual Zero Injury Safety Awards Gala in Washington, D.C. Nearly 200 contractors, owners and union representatives were honored for their hard work in achieving zero injuries on job sites across the country. For instance, the top winners in the Silver Star category—The State Group Industrial (USA) Limited, Alcoa Inc. and the Southwestern Indiana Building Trades Council—logged in 791,191 injury-free hours at the Warrick Generating Station in Newburgh, Indiana (you can find the entire list of winners on Pages 16 and 17).

As we enter this joyous holiday season, I hope you'll continue to make safety your company's number one priority. Inevitably, the closer we examine our operations, the more opportunities we find for improvement and ensure our workers go home in the same condition as they arrived.

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Driving home the safety

by DAVID ACORD

ONE OF THE challenges TAUC contractors face is how to effectively communicate the importance of safety to their employees on a daily basis. There are only so many times you can repeat the same catchphrases or distribute the same old reading materials. After a while, “safety first” can become nothing but background noise. In order to capture workers’ attention and keep safety front and center in their minds, sometimes contractors have to think outside the box and deliver the message in a new and innovative fashion.

This past summer, Scheck Industries, in partnership with Bechtel, ConocoPhillips and Cenovus Energy, decided to take action, and coordinated a safety luncheon for more than 1,300 craft workers at ConocoPhillips’ Wood River Refinery in Roxana, Illinois. Scheck and Bechtel are working together as contractor partners at Wood River’s Coker and Refinery Expansion (CORE) Project. So far the two companies have put in more than 3 million work hours building the new coker unit from the ground up.

But this wasn’t any old safety luncheon. To make sure they got their message across, Scheck invited NASCAR driver Clint Bowyer (the company’s official safety spokesperson) to speak to the thousand-plus employees, and he even brought along his #33 Cheerios car. “The project team here has a strong safety culture,” Bowyer said. “We will continue strengthening this culture across our owner, contractor and craft team with a commitment to no one getting hurt on the job.”

It makes sense that Scheck partnered with a professional driver; the company’s president and CEO, Richard Scheck, has been a racing fan his entire life, and in his younger days even raced in his own 1958 Chevrolet Impala. Bowyer is also uniquely suited to discussing safety with construction workers; as a NASCAR driver who spends his days whipping around a track at 200 miles an hour, he knows firsthand the importance of having the proper safety gear in place and following safety procedures to the letter. And much of the equipment workers use on the CORE project—helmets, harnesses, fire suits—is similar to the equipment used on NASCAR tracks.

The event also gave workers a chance to hear from top executives at Scheck, Bechtel and ConocoPhillips, all of whom emphasized the importance of safety. “You’ve got to focus on your work, but also see what’s happening around you, too,” Rich Bowerman, New Units Project Manager for ConocoPhillips, told the crowd. “You can be so focused on the task at hand, you miss the big picture.”
“Turn to the person next to you and say, ‘I’m going to keep an eye on you today, and I’m going to ask you to keep an eye on me today,’” added Andrew Coombes, site manager for Bechtel.

**PAYING DIVIDENDS**

Hosting such a huge event required a substantial financial commitment at a time when many companies are scaling back, but the organizers felt the message was worth it. “The economy is tough, and the event was not cheap, but safety can never rest,” said Richard Scheck, president and CEO of the company that bears his name. “A person can be hurt on the smallest of jobs or the largest of them. We cannot take them for granted, and we cannot let the economy dictate the directions we take to improve the safety on our projects.

“Accidents are costly, insurance is costly,” Scheck added. “The better we perform on our projects in the safety arena, the lower our insurance rating is, and that pays dividends. Part of our culture is the realization that every dollar we spend on safety is returned times three. At the end of the day, there is no dollar amount we could put on the cost of a life.”

The feedback Scheck received from employees after the event was overwhelmingly positive. “The reaction of the employees was outstanding,” said Randy Peach, Scheck’s vice president of operations. “For weeks the employees that attended the event were talking about it. Whether or not Clint Bowyer is their favorite driver, he is the driver they had the opportunity to meet and shake hands with. The speech Clint gave was moving to say the least. I heard one employee say, ‘It’s not just that they brought the driver and race car out here – he knew about us, and he truly showed that he appreciated what we do.’ When Rich Scheck spoke, he told the workers that first and foremost we are here for them and that we truly care about their safety. The employees walked away with that realization.”

Peach said he believes the timing of the event was also important, and that by demonstrating the company’s commitment to safety it will reap rewards down the road. “At the time of the event, we were manning up quickly. It was the most critical time for safety. We’re indoctrinating new employees to the site every day, and the mentoring process takes time. Awareness of our surroundings and of our fellow workers is our best ally. We hope that this event brought the awareness level to a high point, as well as the morale. Happy employees work safe. We made a lot of people happy that day. Before it’s over, this project will have trained thousands of people, and we will take many of them to the next project somewhere else around the country. That puts us one more step ahead in the game!”

Meanwhile, work continues at Wood River. Once the CORE Project is completed in 2011, it will push Wood River up in ranking from the tenth largest refinery in the U.S. to the sixth largest, with a capacity of 356,000 barrels per day.
Progress, price and the evolution of bargaining

by MARK BRESLIN

COLLECTIVE BARGAINING as a running battle between labor and management is dead. The age-old exercise in gamesmanship with labor and management has run its course. What it has left us with is a conglomeration of agreements that rarely are relevant either economically or operationally. Many times these agreements are 50-100 page legacy documents that bear no relevance to growth strategy. At their core, collective bargaining agreements are just a pricing and value document for construction end users to evaluate where they should spend their dollars.

Construction as a business is highly price-sensitive. Thus any owners, from Sally the senior citizen who needs work done on her home to Shell Oil as a major industrial owner, are going to evaluate value and price as a main driver of their decision to use union versus non-union construction services. If we look at collective bargaining through this filter you can quickly see what we are really engaged in: a joint effort to give customers what they are willing to pay for.

Instead, traditionally, every three years labor and management sit down and negotiate. Most of the time they think they are negotiating with or against each other, but they’re not. They’re developing a joint proposal to hand to Miss Sally or Mr. Oil Company CEO or any other public or private owner. It is not the union or the contractor who decides if you have a good or bad agreement; it is the owner paying the bill. And based on the agreement’s joint pricing and operational proposal (compared to other options available in the market), labor and management are either rewarded or punished with market share gains or losses.

What has been lacking on the way down (while going from 85% union national market share to 15% today), is the willingness to recognize bargaining as a market-driven process. What are the owners willing to pay for? It doesn’t matter what we think since it’s not our money being spent. Do our agreements make sense from a business standpoint? Are we under or over the price point in our market?

Now, when it comes to asking the owner what they need and want, I already know what will be said: We don’t want “a race to the bottom.” Well folks, if losing 30-70% market share in every market in North America is not already a race to the bottom, then I don’t know what is.

Simple rules govern almost all business and pricing decisions, and it is time we took a hard look at the choices we are making at the negotiating table.
1. Price in large measure determines market relevance.
2. Variable pricing (giving the customer options) generally improves market relevance.
3. Competition and supply and demand (should) always influence price.
4. Increasing prices without adding value reduces market share.

So the really interesting question that labor and management have to ask is this: Based on these principles and your market conditions, which construction owners are willing to accept your price proposals?
How many are going to take the proposal from the non-union bidder? When the economic and operational difference between these proposals influences the owner’s decision to “go the other way,” there are four choices for labor and management:

1. Do nothing. Allow market conditions and competition to set market share and then hope, pray and be reactive later.
2. Introduce variable pricing and proposals. Examine multiple levels of pricing for classifications; reconsider the “one size fits all” models and markets approach.
3. Try to introduce or retain price stabilization models such as PLAs or prevailing wage laws to create benchmarks for market conditions.
4. Reduce price proposals to retain or gain markets where our price point has exceeded relevance.

Each of these options is tempered by a number of variables: Proactive versus reactive strategy. Trust between the parties. Supply and demand of construction services. The level of engagement and education of union members. Political willpower. Leadership. What is very clear, though, is that the market is demanding more from labor and management. There is an excess of labor supply in the market. The competition has reduced pricing while union construction costs continue to increase. Influencers such as PLAs are dependent on political capital and are meeting pushback in some places. Reduction or modification of terms or pricing is controversial with union member constituents who may have unrealistic (or uninformed) expectations of their leaders. Many claim to want no change, even though 30-40% may be unemployed and sitting on the bench.

In summary, the future of bargaining has to be market relevant. It takes real research to know where you are and where you want to go. It is going to take a sincere effort by both labor and management to educate union members to obtain their support for necessary change or innovation. It is going to take bolder leaders with more vision and a real willingness to embrace innovation and risk.

The majority of the construction owners really don’t care if we thrive or stumble. Our challenges and problems are largely irrelevant to them. Our relationship with them is economic. They are waiting to reward or punish us with their construction dollar. They are asking a vital question: What do you have for me to evaluate as I make my choice? Labor and management must answer that question more effectively in the future, or accept the market consequences of the status quo.

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. Read more about him at www.breslin.biz.

Simple rules govern almost all business and pricing decisions, and it is time we took a hard look at the choices we are making at the negotiating table.
WASHINGTON, D.C. – The National Maintenance Agreements Policy Committee Inc. is pleased to congratulate the winners of the 10th Annual Zero Injury Safety Awards (ZISA).

The ZISA Gala was held on Thursday, October 28 at the National Building Museum in Washington, D.C. Sixty-three awards were presented, accounting for more than 10 million injury-free hours worked in calendar year 2009. Each 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.

“The winners’ hard work, cooperation and dedication to the zero injury philosophy proves once again that union construction is the safest and best option on the market,” said Steve Lindauer, Impartial Secretary and CEO of the NMAPC.

The highest honor of the evening went to The State Group Industrial (USA) Limited, Alcoa Inc. and the Southwestern Indiana Building Trades Council. The tripartite alliance was awarded the ZISA Silver Star Award for more than 791,000 injury-free work hours performed at the Warrick Generating Station in Newburgh, Indiana.

Three additional Silver Stars were awarded. The tripartite recipients were:

- **Enerfab, American Electric Power** and the **East Central Ohio Building Trades Council** for more than 592,000 injury-free work hours performed at the Conesville Power Plant in Conesville, Ohio.

- **Solid Platforms, BP Products North America** and the **Indiana/Kentucky Regional Council of Carpenters Northern Office** for more than 539,000 injury-free work hours performed at the Whiting Refinery in Whiting, Indiana.
philosophy,” said Lindauer. “When he retired from Shell Oil Company in 1992, he devoted himself full-time to spreading the message and convincing owner-clients, contractors and unions that an injury-free workplace wasn’t just a myth or some utopian idea. It’s safe to say that Emmitt’s hard work, commitment and passion have pushed the zero injury concept to the forefront of the construction and industrial maintenance industries.”

The keynote speaker for the evening was Lt. General Russel Honoré (Ret.), the Commander of Joint Task Force Katrina in 2005. Known for his no-nonsense leadership philosophy, Honoré delivered a vivid, patriotic speech that brought a standing ovation from the crowd. Honoré also congratulated the ZISA winners for their outstanding commitment to the zero injury philosophy.

“We celebrated a milestone,” Lindauer said of the event. “Almost everyone at the ZISA Gala played a part in a decade’s worth of outstanding effort from union contractors, their customers and tens of thousands of union craft workers. I look forward to the next ten years, and I’m confident we can achieve even greater things.”
### 10th 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
- **Brilliant, OH**
  - **Cardinal Plant**
  - **Chapman Corporation**
  - **GVH Environmental, Inc.**
    - **American Electric Power**
  - **Whiting, IN**
- **Enerfab Corporation**
- **FirstEnergy Corp.**
  - **Upper Ohio Valley Building Trades Council**
  - **Masontown, PA**
  - **Hatfield’s Ferry Generation Station**
- **Solid Platforms, Inc.**
  - **BP Products North America, Inc.**
    - **Indiana/Kentucky Regional Council of Carpenters - Northern Office**
- **Enerfab Corporation**
  - **Newburgh, IN**
- **Whiting, IN**
- **B. E. Fruccon Industrial Services**
  - **Procter & Gamble**
- **American Electric Power**
  - **Upper Ohio Valley Building Trades Council**
  - **Hemlock Semiconductor Corporation**
  - **Scheck Mechanical**
- **American Electric Power**
  - **Upper Ohio Valley Building Trades Council**
- **Chapman Corporation**
  - **Allegheny Energy Supply**
  - **North Central West Virginia Building Trades Council**
- **Grott Environmental, Inc.**
- **Pittsburgh Building Trades Council**
- **Chapman Corporation**
  - **Allegheny Energy Supply**
  - **Hemlock Plant, MI**
  - **Solid Platforms, Inc.**
- **Cleveland, OH**
  - **Cleveland Building Trades Council**
- **Chapman Corporation**
  - **Allegheny Energy Supply**
  - **North Central West Virginia Building Trades Council**
  - **Construction & Turnaround Services, LLC**
- **Whiting, IN**
  - **Whiting Refinery**
  - **Construction & Turnaround Services, LLC**
  - **Cherne Contracting Corporation**
- **York Haven, PA**
  - **Brunner Island Station**
- **Pittsburgh Building Trades Council**
- **Norris Brothers Company, Inc.**
- **Alcoa Inc.**
  - **Willow Island, WV**
  - **Pleasants Power Station**
- **York Haven, PA**
  - **Tri-State Building Trades Council**
  - **American Electric Power**
  - **Babcock & Wilcox Construction Co., Inc.**
- **Masontown, PA**
  - **Hemlock Plant, MI**
- **Cherne Contracting Corporation**
  - **City Utilities of Springfield (MO)**
  - **Southwest Power Station II**
  - **Springfield, MO**
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- **Bethlehem, PA**
  - **Sporn Plant**
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  - **Pleasants Power Station**
- **Springfield Building Trades Council**
- **Cleveland Building Trades Council**
  - **Cleveland Forged and Cast Products Plant**
  - **Cleveland, OH**
- **Whiting, IN**
  - **Whiting Refinery**
  - **Whiting, IN**
- **Springfield, MO**
  - **Southwest Power Station II**
  - **Springfield, MO**
- **Hemlock Plant, MI**
  - **Solid Platforms, Inc.**
  - **BP Products North America, Inc.**
  - **Indiana/Kentucky Regional Council of Carpenters – Northern Office**
- **Pittsburgh Building Trades Council**
  - **Whiting, IN**
  - **Whiting Refinery**
  - **Whiting, IN**
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  - **Southwest Power Station II**
  - **Springfield, MO**
- **Cleveland Building Trades Council**
  - **Cleveland Forged and Cast Products Plant**
  - **Cleveland, OH**

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  - **Brunner Island Station**
  - **York Haven, PA**
- **Captains Constructors, Inc.**
  - **American Electric Power**
  - **Tri-State Building Trades Council**
  - **Sporn Plant**
  - **New Haven, WV**
- **Chapman Corporation**
  - **United States Steel Corporation**
  - **Pittsburgh Building Trades Council**
  - **BP Products North America, Inc.**
  - **Irvin Works**
  - **Dravosburg, PA**
- **Solid Platforms, Inc.**
  - **BP Products North America, Inc.**
  - **Indiana/Kentucky Regional Council of Carpenters – Northern Office**
  - **Whiting Refinery**
  - **Whiting, IN**
- **Cherne Contracting Corporation**
  - **City Utilities of Springfield (MO)**
  - **10th Annual NMAPC Zero Injury Safety Award Winners**
  - **Norris Brothers Company, Inc.**
  - **Alcoa Inc.**
  - **New Haven, WV**
  - **Tri-State Building Trades Council**
  - **American Electric Power**
  - **McCarl’s Inc.**
  - **PPL Corporation**
  - **Central Pennsylvania Building Trades Council**
  - **Brunner Island Station**
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  - **Cleveland Forged and Cast Products Plant**
  - **Cleveland, OH**

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Each year the National Maintenance Agreements Policy Committee Inc. (NMAPC) presents the Zero Injury Safety Awards to honor those owners, contractors and union partners who work together to create an injury-free environment on their jobsites. For more information about the awards, including application criteria, go to [www.nmapc.org/zisa](http://www.nmapc.org/zisa).
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Can a union and a contractor conspire to violate antitrust laws?

by STEVEN FELLMAN

EARLIER THIS YEAR, the U.S. Court of Appeals for the Second Circuit upheld the dismissal of an antitrust complaint filed by U.S. Information Systems Inc. against the International Brotherhood of Electrical Workers (IBEW) Local No. 3 and several contractors that employed Local 3 workers. The plaintiffs were union contractors that employed members of the Communications Workers of America (CWA) to install low-voltage electrical systems such as telephone, data, fire alarm and security systems in the New York City metropolitan area.

IBEW Local 3 took the position that low-voltage electrical work in the metro area had historically been within its province and challenged the right of CWA members to perform the work. Since the CWA wage scale was significantly lower than the Local 3 wage scale, contractors using CWA members were able to underbid contractors using Local 3 members. Basically, Local 3 claimed the CWA was taking away jobs.

The CWA contractors alleged that there was a conspiracy between Local 3 and its contractors to restrain trade by engaging in practices prohibited by the antitrust laws. It was alleged that as part of this conspiracy, owners and general contractors were informed by Local 3 and its contractors that if CWA members began work on a jobsite where Local 3 members were employed, the job would be slowed down, disrupted or not finished on schedule.

As part of their proof, the plaintiffs provided examples where Local 3 members allegedly threatened job disruptions and work stoppages. The plaintiffs also provided several specific examples where Local 3 members refused to work overtime in the event that CWA members began work on the jobsite. According to the plaintiffs’ allegations, it was common practice for Local 3 employees to work overtime to permit other trades to have access to necessary electrical input during the workday. However, on a series of jobs, once CWA members began working on the jobsite, the Local 3 employees

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refused to work overtime. As a result, these jobs fell behind schedule.

In its defense, Local 3 pointed to specific language in its collective bargaining agreement with New York City electrical contractors. A clause in that agreement provided that union members were not required to work overtime and that they wouldn’t do so without specific approval from the union hierarchy. Under the agreement, it appeared that the hierarchy had the right to determine, with or without cause, whether Local 3 members would work overtime.

After examining the facts, the courts discussed the relationship between the antitrust laws and the labor laws. Generally, agreements between a union and an employer are exempt from antitrust scrutiny if they are intimately related to wages, hours and working conditions and if the union’s successful attempt to obtain a provision in the agreement is done through bona fide, arm’s-length bargaining and pursuit of their own labor union policies, not at the behest of or in combination with non-labor groups. Thus, unions can do everything needed to legitimately seek to expand the work that they are entitled to perform. It would be a legitimate union function for Local 3 to attempt to expand the scope of its work to include work that had been performed by CWA.

The court noted that in order to prove an antitrust violation, the plaintiffs must prove that there was a conspiracy between two parties. In this case, the contractors and Local 3 must have conspired to restrain trade. Independent actions by either the contractors or the unions would not have met the test. The crucial question was whether the challenged anti-competitive conduct stemmed from independent decisions by the union or by some type of a collective decision made by both union and contractors. The court found that there was no adequate evidence of such a conspiracy, and even if there was evidence of intimidation, the conduct in question was that of Local 3’s alone, and not the conduct of either contractors or Local 3 working in concert with the contractors.

Finally, the court recognized that “unfair as it may seem to the plaintiffs for the defendant contractors to benefit from the misbehavior of their employees, such a benefit does not violate the antitrust laws unless it was a result of concerted, rather than independent, action.” In other words, the fact that the Local 3 contractors told owners that if they brought CWA contractors on site they would have a problem did not necessarily indicate that there was a conspiracy with Local 3. The contractors were just stating a fact and informing the owner of potential risks that had occurred on other jobsites. Each contractor would deliver the same message – not because they conspired together to do so but because none of them could control Local 3’s actions.

The judge concluded by stating that “unilateral conduct is outside the scope of Section 1 of the Sherman Act. If Local 3 did in fact threaten building owners and general contractors and encourage its members to engage in workplace misconduct, it might well be liable for extortion. Its actions might also violate the collective bargaining agreement or constitute an unfair labor practice under the NLRA. However Local 3’s actions cannot constitute an antitrust violation under Section 1 unless the Union acted in concert with others. Because the Plaintiffs had not put forward sufficient evidence that the defendant contractors conspired with Local 3 to exclude them from the telecommunications installation market, their antitrust claims against Local 3 should likewise be dismissed.”

This is an important case for all union contractors and should be carefully reviewed.

Steve Fellman is president of GKG Law in Washington, D.C. He is also general counsel to The Association of Union Constructors.
EACH YEAR THE Association of Union Constructors (TAUC) partners with other union trade associations in a legislative coalition called the Quality Construction Alliance to push for federal policies that would benefit the union construction industry as a whole, and 2011 will be no different.

Legislative priorities for the coming year will focus on a number of issues including newly proposed accounting standards that would require disclosures for contractors related to their participation in multiemployer pension plans.

In 2010 the Financial Accounting Standards Board (FASB) released two Exposure Drafts that would significantly impact union contractors in a very negative way. The new disclosure standards would require contractors that participate in multiemployer plans to disclose their potential withdrawal liability, regardless of whether or not they intend to withdraw from the plan or not. TAUC, along with many other organizations in a number of different industries, believes the proposed accounting standards are seriously flawed in that they will require disclosure of information that is two years out of date, is not auditable, and will ultimately be misleading to any end user of financial statements.

In addition, the proposed disclosure requirements create an unreasonable burden on employers and the plans to which they contribute. This is especially true for those employers who participate in a wide variety of different plans encompassing a multitude of different bargaining unit craft workers, simply because they may perform work in a number of different geographical areas at any one time. A regional employer that only participates in one or two multiemployer pension plans may not have the same burdens placed on them, possibly creating a competitive disadvantage for those national contractors that contribute to numerous plans throughout the country. The proposed changes will also have an adverse effect upon the pension plans themselves, since they will be forced to add significant administrative resources and expenses in order to meet these new requirements.

If either of these FASB proposals goes into effect, a huge push may be necessary on Capitol Hill by union contractors and their trade associations to seek significant changes to these standards.

Other related business issues that may need to be addressed include worker misclassification, repeal of the 3% withholding tax, and federal contract procurement reform. TAUC is also involved in a coalition that is pushing for tax credits on industrial efficiency projects that enhance building and industrial energy efficiency, domestic manufacturing and emerging clean energy technologies. The implementation of said tax credits could help provide significant work opportunities to TAUC members.

“TAUC and its members continue to be committed to pressing for legislation that benefits our industry and country,” TAUC Chief Executive Officer Stephen Lindauer said. “There remain a number of challenges in Congress today that require our members’ involvement and attention.”

Last year around this time, we surveyed our members and asked them to list their top legislative priorities. Healthcare and insurance reform ranked first, followed by construction safety and cap and trade/environmental reform. But what about 2011 – what are TAUC members’ biggest concerns heading into the New Year? We’d like to hear from you. Please contact me at (703) 524-3336 x112 or tmustard@tauc.org so we can discuss the challenges you face.

Our association remains focused on pro-business legislative initiatives relating to taxation, labor relations, infrastructure and energy policy. TAUC will continue to work with the Quality Construction Alliance and any other coalition that will advance pro-union contractor initiatives on Capitol Hill.

Todd Mustard is the Senior Director of Government Affairs and Member Services for TAUC.
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Coaching safety in the workplace

by TONY DOWNEY

WHEN YOU THINK of a coach, you usually think of an athletic team. Almost everyone has either had a coach or rooted for one who led your favorite team on the field. Some coaches are revered and others are despised, but they almost always have an impact—either positive or negative—on their players’ lives.

Safety and team sports share a common thread. On an active and busy work site, teams of employees work together to be productive. There is often a “coach” who directs the work, manages the employees and represents the company’s interests.

But when it comes to workplace safety, who is the “coach”? Is it the project manager? The site superintendent? The general foreman? How about the site safety professional? In order to have a positive impact on safe work performance, it has to be all of the above—and even more.

The pressures of schedules, costs and production often distract employees from focusing on safe work practices, making it difficult to focus on the real precursors to injury incidents: unsafe acts and unsafe conditions. Studies show that 88-90% of all injuries are caused by unsafe acts (behaviors) and 8-10% are caused by unsafe conditions (often attributable to an unsafe act by someone).

Studies show that 88-90% of all injuries are caused by unsafe acts (behaviors) and 8-10% are caused by unsafe conditions (often attributable to an unsafe act by someone).

So how can we raise the percentage of employees on our jobsites who can become “safety coaches”? Training, training and more training is one answer. Developing a positive safety culture is another. And personal dedication and accountability to do something every day to make a work site a better place is yet another.

Developing “coaching” skills within the employee ranks can lead to numerous improvements. A good coaching program can:

- Multiply safety awareness and place more “safety people” in the workplace.
- Establish safety as a management function, not just the safety professional’s responsibility.
- Take safety training to the workplace and establish the practice of safety as a living exercise, not a “classroom thing.”
- Reinforce the formation of positive safety practice and habits.
- Enhance “FOCUS” (Forming One Central Understanding for Safety).

When the goal is to prevent injury to employees in the workplace, active participation in the safety process by every member of the workforce is imperative. “Safety coaches” can and should always reinforce safe work efforts by employees. Personal interaction with employees in the work place can provide positive reinforcement for safe work performance. A coach will help employees achieve incident event reduction. Getting better directed worker effort lightens the work load on all members of the management team. Learning to “coach” safe work behavior helps in all other aspects of project performance. A little proactive effort (coaching) can reduce a huge amount of reactive effort (incident investigation, pain and suffering, schedule and production interruptions and cost).

In short, there are many positive business reasons to establish “safety coaching practices” within the safety processes of your company. No whistle or ball cap needed—just some good old-fashioned effort and active caring for the individuals with whom you work!

Tony Downey is the director of safety for Day & Zimmermann NPS, Inc. and chairman of the TAUC Safety and Health Committee. Day & Zimmermann is a TAUC Governing Member.
Increasing market share in a slow economy
by GARY L. BOHN

IN DISCUSSIONS I’VE had with TAUC members across the country over the past year, the primary issue on people’s minds is how work that we had always counted on has slowed down, and in many areas has dried up completely. Nobody seems to have a good handle on when this crunch we’re in will ease off. It may take years to get back to where we were just a short time ago. A contractor without contracts cannot survive, and for many in our business innovation has become a necessity.

We need to find new markets, and in some cases start operating in different areas of the country. Many TAUC members are already doing just that, forced out of their comfort zones to find new sources of revenue and employ craft labor from unfamiliar labor pools. It won’t be easy, but it is doable.

Union contractors need the flexibility to move supervisors in sufficient numbers wherever they need them in order to maximize efficiency.

of 40 and 50%. For many craft workers, unemployment insurance has run out or will run out soon. Dues and per capita are down sharply. “Austerity,” “managing on what we have coming in the door,” and “doing more with less” are the words and phrases we are all learning to live by. Organizations are looking to cut back wherever they can.

In my last article, I encouraged all who are in the unionized construction field to continue to promote the apprenticeship programs. Recruiting and training our replacements is the key to the industry’s survival. However, there are other innovative things that we should also be doing now to improve our ability to gain new market share, even in today’s down market.

Trained and motivated supervisors are widely recognized in all industries as being a key element in the attainment of efficient performance in any work group. A contractor who travels to projects in areas and jurisdictions with unfamiliar labor pools should have the ability to determine how many of his trained supervisors he needs to bring to the area. An innovation that has been discussed widely over the years and needs to be implemented now is expanding the portability of manpower for union contractors.

If a contractor has traditionally been “local,” working in a few specific areas over many years, he will have detailed knowledge of the workforce in that area, and will have developed a cadre of first- and second-tier supervisors who generally stay employed with that contractor. He will have provided many hours of training to these individuals in safety, quality, planning, scheduling, and running organized and efficient jobsites. These individuals will have good communications with management and should be able to expedite the necessary tools, equipment and materials within the contractors’ system in an efficient manner, thereby increasing productivity.

Often, however, a contractor is confronted with area practices and local collective bargaining agreements (CBAs) that impair his ability to bring his most experienced and talented front line supervisors with him when traveling outside his local area. Some examples are:

• Sourcing – Many CBAs are written in order to severely limit the use of traveling members, and only utilize supervision from the local union. This undermines the contractor’s objective of having supervisors he has trained as a permanent part of his management team.

• Inadequate training – Many times candidates referred locally for supervisory positions have limited experience and no formal supervisory training in areas such as leadership, planning/scheduling, materials handling, safety and performance measurement.

• Conflicting loyalties – When supervisors come from the local bargaining unit, a supervisor on one project may be a journeyman the next. One result of this reality is that oftentimes a local supervisor may go out of his way to avoid handling some of the normal supervisory functions that a contractor expects of him, such as measuring crew performance or resolving grievances. With proper training, a foreman or general foreman is capable of handling these duties and more. When they don’t, the contractor must find additional staff to make sure this work

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is done, thereby increasing costs and rendering the contractor less competitive in securing additional work.

Many industries have set apart supervisors by either putting them in their own bargaining units or making them part of the management structure, for many of the reasons just discussed. In unionized construction, this “sacred cow” issue has never been addressed realistically. With our first- and second-tier supervisors being part of a single CBA unit, how do we maintain the status quo, and at the same time encourage union contractors to compete and increase market share?

The answer is to increase portability. Union contractors need the flexibility to move supervisors in sufficient numbers wherever they need them, in order to maximize efficiency, safety and productivity of their operations. They are in the best position to judge the numerous risks entailed in working out of town or on the road. Each bid they place is a gamble that they can bring the necessary resources to bear in order to bring good-paying jobs to union members while making a profit for their company. Let’s help them mitigate these risks!

An initiative for the unrestricted movement of union supervisors is needed now. Bold leadership from both contractor associations and the executive boards of the international unions can bring an issue like this to the table. I believe a convincing case can be made for expediting this across all jurisdictions and not waiting until our share of the construction pie has further diminished.

Why wouldn’t we give such an obvious advantage to our union contractors? When a union contractor is successful he puts more union members to work. The question we should be asking ourselves at this crucial moment is a simple one: How do we make it easier for a union contractor to increase his market share and create new jobs?

Gary Bohn is the TAUC Labor Committee Chairman. A 45-year veteran of the heavy industrial construction field, he currently serves as senior advisor to Kiewit Power Constructors.
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