Undisputed Solution: Consistency

Giving Same Work To Same Trades Can Make A Difference In Avoiding, Handling Jurisdictional Disputes

BY ANDY COLE

Random. Completely unpredictable. Always a surprise.

These aren't descriptions of a trip on the CTA or an afternoon watching Jerry Springer. They're what representatives of some Builders Association contractors say about the nature of jurisdictional disputes.

When the representative of one union on a jobsite claims the work that another union is assigned to do, contractors and construction managers get caught in the middle. A dispute between two unions becomes everybody's problem in a hurry and it could get even worse if a contractor is caught without a plan for dealing with that dispute.

According to most of those polled, that plan begins by simply being consistent.

"What you have to look at is 'have you traditionally and historically given this work to the same group?'" said one contractor's representative. "If nothing is resolved and you do wind up going to the (National Labor Relations Board), it helps if you've demonstrated a strong preference at other jobs for one of those groups doing the work that is at the center of (the dispute)."

According to another executive, while there are things a contractor can attempt to create a resolution, there's no telling when a dispute will occur or end.

"It can be pretty random," he said. "You're lucky if you get a heads-up before somebody else claims the work and there is a dispute. Work goes on, but these cases can take anywhere from two days to three weeks."

The Builders Association spoke to a number of individuals knowledgeable about the steps their companies go through when a jurisdictional dispute arises. Their anonymous responses were used for this article and for an upcoming pamphlet from the Builders Association on best practices in those situations.

Steps When Disputes Arise

One signal of a jurisdictional dispute seems to be the phone ringing off the hook in the office of Builders Association Labor Director Denise Capasso. The BA is proud to be one of the few associations in the area with a full-time labor specialist, and Builders Association members take full advantage of that fact when a problem pops up.

"We'll have the agents of the unions meet, and if that doesn't work we write a letter to both groups with our policy, but we'll also call (the Builders Association)," one administrator said.

"We call Denise," said another. "We seldom come across jurisdictional disputes, but that's one of our first phone calls when it does happen."

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When asked about points of procedure when a dispute arises, many of the professionals polled agreed on one thing … there are no universal points of procedure. The reasons surrounding disputes are as varied as the jobsites on which they occur, and there's no one way to skin this particular cat.

"Each one is unique," said one administrator trusted with risk management when asked about similarities between the squabbles. "They really do need to be handled on a case-by-case basis. Something that works one time isn't going to fix every situation.

"In many cases, you just have to wait and see what happens. You can get the business reps of the two unions together. In many cases, that's one of the first things that happens."

An employee on the job site or the risk management professional at a company can take the first steps to sitting the two unions down.

"There's no specific process to follow," said another executive. "If we're keeping it generic, the Field Superintendent makes an initial attempt to facilitate an on-site solution. You talk through things and reason with the competing unions, assuming the claim is justified."

Resolutions

A number of jurisdictional disputes can be settled not long after they've started by the union representatives sitting down and discussing their views with the contractor present.

"You can talk to both of the unions at a pre-job conference and get them to agree about which trade is going to perform the work," one representative said. "You can try to resolve the problem by using a split crew. Ultimately, it's up to the challenging union to make a case for why they should do that work."

If an agreement can not be reached, one administrator mentioned that his company will send the objecting union a policy, stating his company's position and rules. Demonstrating a set policy, he says, kills two birds in that it shows the union where the contractor stands and prepares the company to show a history of awarding that work to one union if the case is taken before the National Labor Relations Board.

Beyond that, there are a number of NLRB guidelines to follow. A history of awarding certain kinds of work to the same group can go a long way toward preserving a favorable outcome for a contractor.

"Once a group challenged our position in a dispute, brought it before the National Labor Relations Board and lost," that representative said. "We solved the dispute because from the start, we have consistently assigned the same work to the same labor groups."

That philosophy has paid dividends for some of the other contractors, and may have helped stop countless disputes before they even started. Other factors that could help resolve disputes quickly, according to the company administrators, were an experienced Superintendent on-site and knowledge of labor laws.

In terms of cutting short jurisdictional disputes or avoiding them altogether, however, nothing can beat good, old-fashioned consistency.

"Historically, we always have assigned the same type of work to the same type of craft," one BA company representative said. "That way, if a problem arises, we can show our old rule of who always works on what.

"We don't reassign the same work to new labor groups. We always have the same groups do the same jobs they've always done for us, and that helps to prevent disputes from starting."

Best Practices

No amount of care can completely eliminate the possibility of a dispute on a jobsite. As complicated as the issue can get, simply being prepared and knowledgeable can help a contractor react the right way when the time comes.

"I think having a fairly decent knowledge of whose work has been whose, both with our executives and with the guys on the jobsite, has helped us in the past," one executive said. "We're in a good situation in that we do tend to have experienced personnel on the job, and they can put what they've learned over the years to good use."

Another executive echoed the sentiment that experienced personnel can go a long way toward diffusing a potentially difficult situation.

"An experienced Super on your jobsite is important," he said. "It's the first step. If the Super doesn't feel comfortable or doesn't feel like the matter is likely to get resolved, then management gets involved. You also want to investigate and see if the union that's claiming the work has previously disclaimed it in another instance, which is sometimes the case.

"Either way, you can draw on experience. If you have people who are prepared and knowledgeable, it can help."

"Each one is unique. They really do need to be handled on a case-by-case basis. Something that works one time isn't going to fix every situation."

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