

The Business Roundtable

**CONTRACTOR SUPERVISION
IN UNIONIZED CONSTRUCTION**

**A CONSTRUCTION INDUSTRY COST
EFFECTIVENESS PROJECT REPORT**

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I

SUMMARY

Effective, cost-conscious, goal-oriented supervision is a key requirement if productivity is to be improved on large industrial projects within the unionized sector of U.S. construction. The principal obstacle – not present in any other major industry – is the membership of foremen and general foremen in the same bargaining group as the employees they supervise.

Union contractors routinely rely on the union hall for referrals of first and second-level supervisors. In turn, these supervisors look to the union business manager, rather than to contractor management, for job security, pension and welfare plan administration and wage bargaining. The situation is compounded in many areas where contractors have bargained away, or failed to exercise, their management rights. Understandably, the managerial role of these unionized supervisors has become quite limited. Motivating them to control wasteful work practices and to initiate productivity improvements is often difficult.

Recognizing widely fluctuating workloads in the construction industry and the varying geographic involvements of individual contractors, four general recommendations are offered:

- As an immediate objective, contractors seek to bargain out of labor agreements all references to supervisors above the first level of foreman.
- As an immediate objective, contractors arrange to handle, independently of unions, the recruitment, conditions of employment, and training of all supervisors above the first level of foreman.
- As a longer-term objective, contractors also seek to bargain out of labor agreements all references to first level foremen. However, contractors should retain the flexibility to draw foremen from craft positions during peak periods and to use such foremen in craft jobs subsequently during slack periods.
- Owners encourage contractor efforts to expand the management role of foremen and general foremen, to increase cadres of salaried supervisors (foremen and above), to

reward the better performers, and to negotiate changes in labor agreements needed to accomplish these objectives.

These steps are crucial to improve productivity in the construction industry and to enhance the competitive position of contractors who use union labor. The recommendation for a two step approach recognizes the current lack of an effective alternative source of supervisors and the need to use the hiring hall while changes are being made.

II

BACKGROUND

Effective supervision is generally considered to be a prerequisite for efficient performance by any work group. When the potential for productivity improvement by union contractors on industrial projects is examined, the need for more highly motivated, cost-conscious and responsible supervision is frequently noted. Recognizing this, the Construction Industry Cost Effectiveness Task Force commissioned this study. Its focus is on the fact that foremen and general foremen in unionized construction have difficulty performing adequately as supervisors because of their union membership.

The intent of the Task Force is to unearth facts, identify problems, and propose solutions, not to place blame on any one segment of the industry. There is much evidence that responsibility for ineffective supervision on unionized construction must be shared by the contractors, their associations and the unions, with the construction user (owner) contributing in some instances.

Over many years, numerous prerogatives of management have been bargained away or forfeited by inaction or adherence to past practice. This gradual but relentless attrition of management's rights is a substantial contributory cause of ineffective supervision in unionized construction and of the consequent steady rise in costs. Moreover, in many instances contractors have failed to exercise or to enforce those rights they have – rights spelled out in bargaining agreements. In both instances, one difficulty has been a reluctance among owners to support contractor's efforts to retain or regain management rights which would sometimes involve reimbursement by owners of contractor's short-term costs.

Most foremen and general foremen have risen from journeyman ranks in unionized construction. As a result, foremen and general foremen typically are members of the same union as the employees they supervise, and are covered by the same labor agreements. It is logical, therefore, that such foremen view the union as their *de facto* employer and agent, responsible for negotiating their wages, hours and conditions of employment; for pursuing their grievances; and for arranging their next job. Fringe benefits are usually dependent on continued membership in the union. Actions that antagonize a large percentage of the people working for them, or the union business agent, could jeopardize the jobs of these supervisors. It is an unpleasant fact that jobs as foremen and general foremen are often political plums distributed by business agents to loyal supporters, rather than earned through demonstrated skills or supervisory abilities. This difficult situation is peculiar to the unionized construction industry, in contrast with the typical fixed-site industrial plant where

supervisory jobs are considered to be part of management and are usually not unionized.

Much large industrial construction work is performed by traveling contractors (contractors who operate nationally) whose workload in any given locality varies widely. Concerned with the high cost of retaining and relocating first- and second-level supervisors from project to project, as well as with labor stability, the contractor has few options other than to draw such supervisors from local unions. Practical considerations deter him from developing other options that might be available. The business agent may persuade the contractor that the general foremen he recommends will help significantly to keep the job running smoothly. In turn, each general foreman will recommend certain preferred individuals for foreman assignments. While labor agreement may give the contractor the sole prerogative of choosing foremen, a general foreman's recommendations about his lieutenants are unlikely to be overruled lest squabbling impede progress on the job.

These effects may not be felt by local contractors. Many, by providing stable employment and by generally good management practices, are able to develop and retain competent supervisors. Smaller local contractors have an even greater opportunity to pick foremen from craftsmen who display good management potential. By guaranteeing steady work, by offering a variety of perquisites and by holding their supervisors accountable, they are able to develop a cadre of productive first-level supervisors. Although union members, such supervisors do not feel as dependent on referrals by the business agent for future employment, and often show little interest in union affairs. They are more likely to feel their interests are best served by contributing to efficient performance by their employer. However, when these contractors take on a volume of work which significantly exceeds the capabilities of their normal supervisory force, they also rely on union referrals –with the same range of consequences already noted.

III

RELEVANT LABOR LAW

Federal labor law and policy, as handed down by the National Labor Relations Board and reviewing courts, comprehensively govern the relations between construction employers and construction unions with regard to construction supervisors.

The National Labor Relations Act's definition of the word supervisor" has been, and continues to be, reinterpreted – both more broadly and less broadly – requiring that care be exercised and, at times, that competent legal advice be obtained.

The National Labor Relations Act obligates an employer to bargain in good faith with his employee's certified representatives. This obligation to bargain is mandatory on both parties with respect to "wages, hours, and other terms and conditions of employment", but it leaves the parties free to bargain if they choose to do so, or to refuse to bargain, on other subjects. Most labor agreement provisions regarding employees who fall within the NLRA's definition of "supervision" are in the latter "permissive" category -- subjects which may lawfully be agreed to, but on which neither party is obliged to bargain.¹

It is acknowledged that unions retain significant disciplinary control over supervisors, who have been allowed by employers to retain union membership, with respect to the "non-supervisory" activities of such supervisors. At the same time, these supervisors are protected from adverse union disciplinary action directed against their decisions, vis-a-vis bargaining unit employees, ***so long as the individual foreman possesses supervisory authority and qualifications as defined by the NLRB and the courts, and so long as he exercises responsible direction over the employees.*** Union discipline in the form of fines or expulsion from union membership, or other actions or threats if precipitated by the exercise of supervisory responsibilities should, therefore, be considered by the contractor as an unfair labor practice and processed before the NLRB.²

¹ The reader is referred to The Business Roundtable report "***Subjects of Bargaining: A Basic Guide for Contractors***", December, 1981, for further discussion of mandatory and permissive subjects.

² The matters of the legal status of supervisors, vis-a-vis their unions and their actual supervisory acts, or lack of them, often become mixed and, as a result, cloud each issue legally. For this reason, legal opinion on each case is recommended.

IV

PROBLEMS AND SUGGESTED SOLUTIONS

Contractors' Failure to Exercise Rights

Most national and project agreements, and some local agreements, grant contractors extensive rights with respect to the source, selection, number, reward, etc. of supervisors. Often these rights are not exercised by project management because it is timid, is intimidated by local unions, is concerned with local union goodwill, is not compelled to by its top management or is prohibited by the owner.

Owners are in a good position to influence the solution to this problem by insisting that contractors exercise their existing rights, accepting beneficial local practices while rejecting damaging ones. Owners should not control the selection of supervisors, nor should they inject themselves into labor relations, although they may consult with the contractor on these matters along with others affecting progress of the work. We recommend that they carefully consider, at the bidding and letting stage, each contractor's anticipated relations with labor at the project site and, particularly, his access to local supervisors or his ability and willingness to employ traveling supervisors. It is essential that contractors be effectively evaluated on this point as well as on their ability to handle the type and magnitude of the work. As noted earlier in this study, the contractor should regain, during collective bargaining, rights which have been negotiated away.

Sources of Supervision

Employers entering a local area, or expanding their work load, frequently are required by collective bargaining agreements, by local practice or by lack of alternative resources to apply first to the union-maintained hiring hall when seeking supervisors. This tends to reinforce the feeling of the referred supervisor that he has implied or explicit obligations to the union, which may conflict with the objectives of the employer. Even when the contractor has the right to bypass the union hiring hall, the absence of an alternative referral system often makes it difficult to do so.

Neither traveling contractors nor local contractors whose work force is expanding should be compelled to depend on union officials for referral of foremen. A primary objective should be to incorporate into bargaining agreements the explicit authority of management to select foremen, from whatever source, eliminating any requirement that foremen must be chosen exclusively from referrals by the hiring hall.

Such changes in labor agreements, however, will have no real effect unless contractors have practical alternatives to the hiring hall. Over the short term, contractors should maintain a readily-accessed file of all qualified and potential supervisors with whom they have had prior contact, and should give them first consideration. Over the longer term, a supervisory referral system, sponsored and operated by an employer association, is needed. The existence and efficient functioning of such a system will encourage the orientation of foremen to contractor management by decreasing their dependence on union politics. Traveling contractors will more readily support the local bargaining association at contract termination time, and in financing an employer-operated referral system if the association treats them fairly in supervisory referrals.

Supervisory Ratios

Frequently the ratio of first-level foremen, and in many circumstances, higher level supervisors, to the craft workers they supervise, is determined by a collective bargaining agreement rather than by an employer's decision based upon efficiency, economy and safety.

In collective bargaining, contractors should strive to omit or remove from agreements any reference to ratios between the size of the work force and the number and grades of supervisors. Specifically, contractors should retain the authority to set the number and classification of supervisors, to organize the job management, to assign supervisory titles other than foreman (i.e., area foreman, general foreman, project engineer, project manager, superintendent) and to employ non-members of the bargaining unit as first- and second-level supervisors.

Conflicting Loyalties of Supervisors

Bargaining for supervisors is not mandatory under federal labor relations laws. Even so, contractors have voluntarily obligated themselves substantially in this area. Most supervisors began their careers as members of their craft unions, so the collective bargaining process has set their wage rates, benefits and working conditions, and provided an effective referral system. Naturally, they have a self-interest in continuing to participate in attractive pension and other benefit programs, and to avail themselves of placement services available only to union members. Under such circumstances, it is easy to understand divided loyalties.

There is strong feeling throughout the industry that the solution to this problem is ultimately to remove the supervisor contractually, emotionally and philosophically from the bargaining unit. We agree that returning all supervision to management control would eliminate many present difficulties, but realistically this must be viewed as a

long-term goal. On the other hand, there are goals that – pursued diligently at the bargaining table – would seem to be more attainable now. Some of these have the potential for substantial improvements in cost effectiveness and are addressed elsewhere in this study.

Union Interpersonal Relationships

The selection of a supervisor may be political. Moreover, a supervisor on one job may be a journeyman on the next. As a result, foremen and general foremen may avoid handling, and contractors may avoid delegating to them, such normal supervisory functions as manning schedules, performance measurement, grievances and discipline – even though with proper training the foreman and general foreman are capable of handling such duties competently.

This problem is related to that of conflicting loyalties (see page 7), and requires that management seek over the short term to exclude all supervision above the level of the first-level foreman, and over the long term, to exclude all supervisors from the bargaining unit. The solution to both problems will be hastened through improved treatment of supervisors as valuable and loyal members of the managerial team.

Limitations on Rewards for Excellence

Supervisors who perform at average or below average levels are rewarded with compensation, perquisites, steady employment and personal recognition not materially different than that accorded supervisors who do a superior job. As a result, there is little incentive to excel and rise in management. Moreover, collective bargaining agreements may explicitly preclude significant additional rewards for outstanding performance. The constantly rising costs of all construction supervision, essentially mandated by collective bargaining agreements, complicates solutions to this problem. If, for example, superior performance wins substantial extra rewards for supervisors, inequities could arise with respect to the compensation of other management and technical personnel.

Contractors, by removing from collective bargaining agreements any terms fixing the compensation and benefits of supervisors above the minimums stipulated for first-level foremen, can then develop performance-related reward systems which allow recognition of superior performance.

Distortion of Management Communications

Some labor agreements or area practices require hierarchical channels of communication from management to the general foreman to foremen to craftsmen. This filtering of communi-

cation up and down through several levels often delays and distorts management's instructions and views, as well as those of craftsmen and union supervisors.

Bargaining agreements that explicitly reserve to management the authority to communicate with and direct the work force at all levels will give the contractor the right to plan work, schedule activities, determine crew size and composition, establish methods, discipline, set performance standards, measure performance, and issue instructions.

Inadequate Training of Supervisors

Most employers commit a minimum of resources to the training and development of supervisors. This practice is encouraged by present bargaining agreements that include supervisors, determine the number of positions and require that referrals be made through the union hiring hall. The casual employment of supervisors (see page 10) also contributes to the problem. The lack of effective training by individual employers is not offset by the limited training programs conducted by the unions, employer associations or joint labor management groups. Inadequate training perpetuates less-than-adequate pools of qualified supervisors.

To reinforce the relationship of supervisors as part of management, despite their membership in a union, contractors and contractor associations should exercise total control of programs for training and development. National and local employer associations should develop effective training courses that include a course syllabus, instructional materials, referenced reading texts, self-paced study and standard tests.

Many consider on-the-job training superior to any other kind – and it is sometimes feasible on long-term, large projects or under special conditions. Still it is unrealistic to expect the average contractor, who employs only two or three supervisors, to bear the cost of an on-the-job training program and, at the same time, to pay high wages to participating supervisors. Moreover, while traveling contractors may employ a greater number of supervisors, they cannot afford on-the-job training since they have little or no expectation of re-employing those trained after a project is completed.

Employers should encourage supervisors, as well as journeymen who aspire to rise in their field, to take basic, advanced and refresher courses, including those sponsored by employer associations and those available through local colleges and extension programs. Such courses should be selected to develop and strengthen skills in planning, scheduling, craft technology, materials handling, accident prevention, leadership motivation, and performance measurement. The

cost for successful completion of such courses should be borne by the employer or by the employer association. Traveling contractors will also benefit from this training and should contribute to its cost. Contractors should retain the authority to establish the entrance criteria, select the candidates and certify successful completion of supervisory training programs.³

Casual Employment of Supervisors

Traveling contractors who operate away from their home bases, as well as those with widely fluctuating work loads, usually terminate the jobs of supervisors when they move on or when their work force levels decline materially. The lack of continuity of employment with a single employer encourages supervisors to look upon the union and its hiring hall as the primary provider of steady employment. This reinforces the supervisor's obligations to the union's objectives as well as his dependence on the union for steady employment.

Contractors, individually and/or through their associations are encouraged to develop plans to provide more continuity of employment to their supervisors. A workable relationship between traveling and local contractors, based on understanding, trust and a fair sharing of the cost of these plans, would do much to alleviate the problems caused by casual employment of supervisors and the exclusive use of union hiring halls as a source of supervisors.

Union Discipline of Supervisors

Local unions may attempt to discipline supervisors by fines, lifting of work permits or by other means, or by threatening to do so. These tactics may seriously reduce the supervisor's effectiveness.

Provided the supervisor meets the legal interpretation of the definition of supervisor and is truly acting in that capacity, he is legally protected from union retaliation, (See Relevant Labor Law, page 5) Nonetheless, any supervisor who is a union member is subject to union discipline for violation of union bylaws unrelated to the performance of his supervisory duties. Removal of the supervisor from the bargaining unit would eliminate this problem.

³ This subject is discussed in more detail in a separate report. ***"First and Second Line Supervisory Training."*** The Business Roundtable. 1982.

V

RECOMMENDATIONS

Contractors, as employers, have the primary responsibility for determining the role and duties of their supervisors and for removing any impediments to effective performance. Owners, on the other hand, have a self-interest in these matters because of the direct effect on the cost of their work. In this context, the Construction Industry Cost Effectiveness Task Force developed these recommendations.

For Owner Action:

- Encourage contractors to fully exercise their rights under existing labor agreements in selection and treatment of supervisors.
- Support contractor efforts to strengthen their employer associations, to regain managements rights, and to remove reference to supervisors from labor agreements.
- Give preference in qualifying contractors to bid work to those who support the training and development of a better qualified and larger supervisory pool.
- Consult with their chosen contractors about selection of supervisors and related collective bargaining matters.

For Contractor Action:

- Refuse to bargain about any further erosion of his right to treat his supervisors as management representatives.
- Remove, during collective bargaining, any restrictions on the management role of supervisors which may have been agreed to, including
 - All restrictions on hiring of foreman from sources independent of the hiring hall, while retaining the freedom to obtain referrals of additional foreman candidates from the union during peak periods.
 - Any reference to ratios, numbers, and grades of supervisors.
 - Any restraints on his rights to plan and schedule work, determine crew size and composition, establish methods, discipline the work force, set and measure

performance standards and otherwise efficiently perform their work.

- Any references to supervisor compensation, other than a minimum for first-level foreman, to allow development of performance-related reward systems.
- Reference to all supervisors above first level foreman from the bargaining unit, as a first step toward the long-term goal of removing all supervisors.
- Establish training and development programs for supervisors. Contractors should develop the program content, set entrance requirements, select candidates, and certify completion. National and local contractor associations can plan an important role in general supervisory training. Indoctrination to the job and the contractor's organization and goals is best provided by the individual contractor.
- Strive to provide continuity of employment for supervisors. Establishment of a supervisory referral system independent of the union hall, to provide ready access to supervisory employment by other contractors, would be helpful.
- Provide legal support to any supervisor who is unjustly disciplined or penalized by his union for performance of his supervisory duties.

Traveling contractors who are especially impacted by difficulties in obtaining skilled and highly motivated supervisors are encouraged to contribute to solutions to the problems by:

- Supporting local bargaining.
- Providing support, including financial, to any supervisory referral systems developed by local contractor associations.
- Helping to establish a relationship of mutual trust, understanding and cooperation with local contractors.

V

ACKNOWLEDGEMENT

The significant contribution to this study of the Western Council of Construction Consumers is acknowledged. WCCC surveyed its members and others in 12 western states on this subject and published, in July 1979, a report, "*Contractor Supervision on Organized Construction - Potential for Productivity Improvement*".

CICE REPORTS

The Findings and Recommendations of The Business Roundtable's Construction Industry Cost Effectiveness project are included in the Reports listed below. Copies may be obtained at no cost by writing to The Business Roundtable, ATTN: CICE, 200 Park Avenue, New York, NY 10166.

Project Management -- Study Area A

- A-1 Measuring Productivity in Construction
- A-2 Construction Labor Motivation
- A-3 Improving Construction Safety Performance
- A-4 First and Second Level Supervisory Training
- A-5 Management Education and Academic Relations
- A-6 Modern Management Systems
- A-7 Contractual Arrangements

Construction Technology -- Study Area B

- B-1 Integrating Construction Resources and Technology into Engineering
- B-2 Technological Progress in the Construction Industry
- B-3 Construction Technology Needs and Priorities

Labor Effectiveness -- Study Area C

- C-1 Exclusive Jurisdiction in Construction
- C-2 Scheduled Overtime Effect on Construction Projects
- C-3 Contractor Supervision in Unionized Construction
- C-4 Constraints Imposed by Collective Bargaining Agreements
- C-5 Local Labor Practices
- C-6 Absenteeism and Turnover
- C-7 The Impact of Local Union Politics

Labor Supply and Training -- Study Area D

- D-1 Subjourneymen in Union Construction
- D-2 Government Limitations on Training Innovations
- D-3 Construction Training Through Vocational Education
- D-4 Training Problems in Open Shop Construction
- D-5 Labor Supply Information

Regulations and Codes -- Study Area E

- E-1 Administration and Enforcement of Building Codes and Regulations

Summaries - More Construction For The Money

- CICE: The Next Five Years and Beyond

Supplements - The Workers' Compensation Crisis...Safety

- Excellence Will Make A Difference (A-3)