Doublebreasted Operations and the Decline of Construction Unionism

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Labor relations in the construction industry are conducted under a legal framework that is both different and more favorable to unions than is that in industry generally. One aspect of this favored union environment is that construction employers are more subject to challenge than other employers if they operate both union and nonunion subsidiaries ("doublebreasted operations"). For almost a decade, the construction unions have attempted to obtain legislation disallowing this practice on the erroneous claims that it is unique to the construction industry and responsible for the decline of construction unions. This article examines the facts of the case and concludes that having both union and nonunion construction subsidiaries is no different from having both union and nonunion manufacturing subsidiaries insofar as the structure and operational organization of such companies are concerned; that the initial National Labor Relation Board decision in regard to doublebreasted operations in the construction industry was merely an application of precedent of some years previous in other industries; and that construction industry doublebreasted operations are much more a result than a cause of union decline.

I. Introduction

Because much of the legal, bargaining, and operational systems pertaining to doublebreasting in the construction industry, and their differences with industry generally have been dealt with elsewhere, they are summarized and referenced rather than discussed at length herein. At the heart of the problem and its discussion is the fact that construction union membership has fallen from 40.1 percent of all construction workers in 1973 to 18.8 percent in 1994. This has meant a loss of more than 600,000 union members at a time when construction employment was increasing by nearly one million.

The decline of union membership has, of course, resulted from the loss in the union contractors’ share of the construction market. In the first nationwide study of the market penetration of open-shop contractors, it was estimated that in 1975, "the open-shop builders are in the majority and probably control 50 to 60 percent of the total work." A second nationwide study, made nine years later, concluded that:
the dollar volume of construction produced by union craftsmen is not likely to exceed 30 percent of the total. ... During the years since 1970, open shop construction has increased in the sectors and regions in which it has historically dominated. At the same time, sectors and regions which traditionally have been union strongholds have been significantly penetrated by the open shop.4

No study of this nature has been published since 1984, but based on regular monitoring of the field, the open-shop share of the construction dollar has probably stabilized at 70-80 percent of the total market.5

II. The Allen Arguments

In his article in this issue of the Journal, Professor Allen concludes that economics was the key factor in union decline in the 1970s, but that the decline in the 1980s coincides with an increase in doublebreasted operations and variations in the volume of public construction. I agree that public construction in many parts of the country is more likely to be done by union contractors because of union political pressures. Insofar as doublebreasted operations are concerned, I believe that his arguments6 have the cart before the horse.7

Open-Shop Advantages. The market determines which firms receive the work in construction, as it does in the economy generally. Union construction loses out, not only because of higher wages and especially much higher fringe benefit costs, but also because of superior deployment of labor by open-shop contractors. Allen is quite correct in finding that unions and union contractors have made considerable successful efforts in reducing some of the worst productivity restraints which characterized their contracts and practices prior to the early 1980s, and that wage increases since then have been relatively modest.8 Nevertheless, the costs of union contractors are likely to be noncompetitive for three basic reasons.

First, open-shop wages and benefits remain lower. Wage rates among open-shop contractors tend to be as much as 25 percent below the union rates depending on local market conditions. Fringe benefits play a major role in cost matters, in part because the multitude of union plans cover a small population and thus do not benefit from economies of scale, and in part as a result of less generous open-shop benefits and the use of profit sharing by open-shop contractors rather than fixed benefits.9

Second, nonwage and benefits cost differentials between the open-shop and union sectors remain significant, even though current union contracts are more favorable to union contractors than was the case fifteen years ago. The Construction Labor Research Council (CLRC) has placed "terms and conditions" costs in union construction for 1993 at $2.18 per hour. The CLRC notes that, although the percentage cost of contract terms has declined since the early 1980s, absolute costs have risen because union-sector wage and fringe rates have increased.10 Such nonwage items included in the CLRC study as nongovernment required overtime, shift premiums, show-up pay, manning restrictions, subsistence pay, and travel pay are either not present or less expensive in the open-shop sector.