

CONFRONTING UNION BANNERING

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TODAY'S AGENDA

- Define the problem – bannering and related union pressure tactics
- Explain the law relating to this issue
- Communications strategies to counter bannering
- Highlight the resources available to help



WHAT IS BANNERING?



BANNERING ...

- IS NOT NEW
- IS USUALLY PART OF A CAMPAIGN OF MANY UNION TACTICS (letters, handbills, pickets, “corporate campaigns”)
- IS OFTEN LEGAL, BUT NOT ALWAYS
- HAS NOT SUCCEEDED IN REVERSING UNION DECLINES
- CAN BEST BE RESISTED BY A COMBINATION OF COUNTER-TACTICS (legal, communications, counter-PR)



RELATED TACTICS: PICKETING



RELATED TACTICS: HANDBILLING



MASS PICKETING OR VIOLENCE



THE “RAT”



WHAT UNION “STREET ACTIVITY” IS LEGAL?

- **HANDBILLING**
 - Peacefully handing out truthful fliers on public property.
- **INFORMATIONAL PICKETING**
 - Patrolling across entrances with or without signs, so long as they do not interfere with the rights of neutral parties, such as customers, other contractors, and the public.



WHAT UNION "STREET ACTIVITY" IS ILLEGAL?

- Trespass on private property (except California?)
- False and defamatory statements
- Mass demonstrations, blocking entrances, or similar disruptive conduct
- "Secondary" picketing, i.e., coercing neutral customers/contractors (including noisy and residential picketing sometimes)
- Picketing with organizational intent for more than 30 days without filing an election petition.
- Violence



HOW DOES BANNERING FIT IN?

- Normally less "confrontational" than picketing, and therefore less effective
- But stationary banners are subject to fewer legal restrictions than picketing, so banners can sometimes draw more attention



DOES IT WORK?

- Union membership keeps dropping.
- But some unions apparently think it helps them – they keep doing it – while other unions don't like it.
- Customers certainly do not like it.
- Combined with other pressure tactics, bannering has hurt targeted contractors in some parts of the country.



BANNERING AND THE LAW

- NLRB and the courts have so far declared bannering alone to be usually legal
- But “confrontational” bannering against neutrals, combined with other tactics, has been successfully challenged in court



RECENT CASES

- *Fidelity Construction v. Carpenters* (11th Cir. 2012) (jury verdict against coercive union activity, including bannering)
- *BE&K v. NLRB* (US 2002) (First Amendment protects suits against unions)
- *Eliason & Knuth* (NLRB 2010) (upheld bannering)
- *North Star* (NLRB 2011) (another bad decision)
- *Roundy's* (NLRB pending) (what is “discriminatory” access?)
- *Sheet Metal Workers v. NLRB* (DC Cir. 2009) (bad “Grim Reaper” case)
- *Ralph's Groceries* (Cal. 2013) (pro-union state law enforced)



LEGAL DO'S AND DON'T'S

- Do enforce no-trespassing rules (know your property rights)
- Don't discriminate
- Do maintain incident reports/logs – Notify senior management
- Do create special entrances and/or work times for picketed contractor employees (“reserved gates”)
- Be careful with cameras
- Notify the police and consider increased security
- File NLRB charges against illegal activity
- Sue in court if there is proof of slander, boycott damages, or RICO violations



THE BEST LEGAL STRATEGIES

- SUITS FOR DEFAMATION
- SUITS FOR SECONDARY BOYCOTT DAMAGES
- NLRB CHARGES (narrowly drafted)
- CHALLENGE THE BANNERING “PLUS” ACTS (reserve gates still help)
- BUT SUING THE UNION SHOULD BE THE LAST RESORT (good faith basis)



ABC LEGAL RESOURCES

- Practical Labor Law Handbook
- Chapter attorney network
- Construction Legal Rights Foundation (CLRF)
- mbaskin@littler.com



IF THE LAW CAN'T HELP YOU: WINNING THROUGH COMMUNICATIONS

- Communicating with the owners, the media, and the public at large
- Combining legal and communications tactics
- How ABC can help
 - shameonunionbanners.com
 - ABC National Bannering Resource Guide



COMMUNICATIONS STRATEGIES

- Targets:
 1. Project owner and others in your community – “Take The Pledge To Support Open Competition”
 2. Local media
 3. The Community at large
 4. The Union
 5. Employees



WHAT IS THE MESSAGE?

- The union has a hidden agenda – they want to take work away from good people.
- The union demonstrators are (usually) not construction workers; they are often homeless people being exploited by the union
- The targeted contractor pays fair wages and benefits and employs local residents
- The contractor's workers are not on strike – they are working and glad of it
- The union contractors cant do the job as well
- If the union tactics win – the public will lose



Shameonunionbanners.com

SHAME ON UNION BANNERS.COM

What is Bannerin? Myths & Facts Confronting Bannerin Media About Us

For Developers & Project Owners »

For Contractors »

For the Media »

What is Bannerin?
 "Bannerin" is a pressure tactic used by organized labor where individuals – often temporary hourly workers employed for this specific task, not union members – are hired to hold a large banner outside a business "shaming" either the owner of a construction project (for example, a retailer, medical facility or government entity) or construction-related firm by name for some kind of alleged wrongdoing.

Update: Learn more about an important new legal decision for construction firms and their customers [here](#)




Read more >

Under Bannerin Attack? Here are the first steps to take.
 Some insights and tips to help you in preparing your initial reaction to a



Michigan Carpenters Union "Bannerin"




ABC Bannering Resource Guide

“Just the Facts”

| THE ISSUE | WHO IS ABC? | BANNERING |
|--|---|---|
| <p>Business owners working with ABC members, who have chosen to be merit shop contractors, are being targeted by Unions, particularly by the Carpenters Union.</p> <p>Because Unions have been unsuccessful in organizing merit shop construction employees and employers, the Unions have chosen to go directly to the owners and manipulate their choice of contractors.</p> <p>The Carpenters Union bannering campaign claims merit contractors don't pay "area standard wages" and accuses them of breaking the law. Their claims are not based on fact and are designed to eliminate competition and recover work for Union members.</p> <p>Our goal is to educate owners about the tactics being used, clarify owners' rights and offer suggestions on how to deal with this current activity.</p> <p>If the Union campaign is successful, and merit contractors are forced out of business, your construction costs are likely to increase.</p> | <p>ABC provides this information in order to prepare you should your business be targeted by the Union's bannering campaign.</p> <p>We hope that as business owners you will consider the potentially costly consequences of submitting to Union demands.</p> <p>ABC is a national organization that advances the principles of free enterprise and merit in the construction industry.</p> <p>ABC provides members and their employees with opportunities to succeed by promoting safe, quality, and sustainable construction.</p> <p>We are happy to speak with you to provide more information helping you to better understand your rights.</p> <p>ABC Sierra Nevada Chapter 240 S. Rock Blvd., Suite 121 Reno, NV 89502 775.358.7888</p> <p>Clara Andriola, <i>President</i> Megan Jackson, <i>Government Affairs Liaison</i></p> | <p>A Guide for Construction Project Owners & Contractors</p> <p><i>developed by</i> Associated Builders & Contractors Sierra Nevada Chapter</p>  <p>ABC Associated Builders and Contractors, Inc. Sierra Nevada Chapter</p> |
|  | | |



What Can YOU Do?

1. Immediately contact your contractor and ABC (if you are a member) when you receive a letter or if banner-ing begins at any of your facilities.
2. Get copies of leaflets and document the banners and activity with photos.
3. If union representatives trespass on private property, or if the activity impedes your access or egress or becomes a public nuisance, call the police to handle the situation.
4. If you wish, your contractor can distribute leaflets at your properties explaining this union tactic.
5. In one case, an owner met with customers and stakeholders and the response was outstanding. The owner received overwhelming support for their choice of an ABC member who is a contractor.
6. If you are an ABC member, ABC can help you explore filing a charge with the National Labor Relations Board (NLRB).

Who is ABC?

- ABC is a national organization that advances the principles of free enterprise and merit in the construction industry.
- ABC provides members and their employees with opportunities to succeed by promoting safe, quality, and sustainable construction.
- ABC provides this information in order to prepare you should your business be targeted by the union's bannering campaign.
- We hope that, as business owners, you will consider the potentially costly consequences of submitting to union demands.



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New Mexico Chapter

DEALING with UNION BANNERING

A Guide from Associated Builders & Contractors



Examples of Positive Bannering

Thank You

CREEKSIDE CROSSING
GORE ACOUSTICS & DRYWALL

FOR SUPPORTING
100'S OF FAMILIES IN OUR COMMUNITY

Thank You



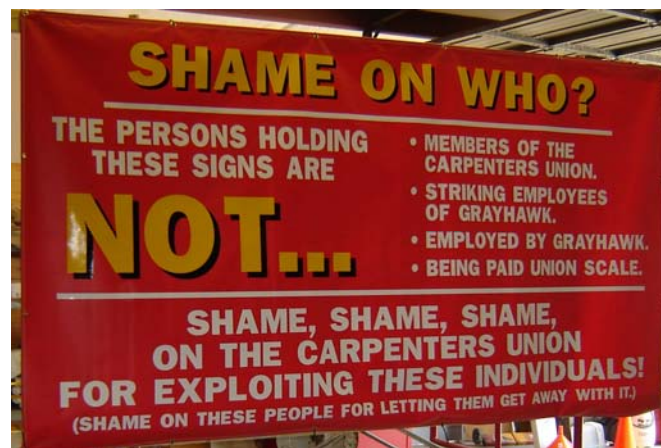
Examples of Counter- Bannering



SHAME ON CARPENTERS UNION 1319
OGB AND THE CONSTRUCTION COMMUNITY
SUPPORT LONE SUN BUILDERS
HELP STOP THE LIES AT 505 344-8160



Examples of Counter-Bannering



SHAME ON WHO?

THE PERSONS HOLDING THESE SIGNS ARE **NOT...**

- MEMBERS OF THE CARPENTERS UNION.
- STRIKING EMPLOYEES OF GRAYHAWK.
- EMPLOYED BY GRAYHAWK.
- BEING PAID UNION SCALE.

SHAME, SHAME, SHAME, ON THE CARPENTERS UNION FOR EXPLOITING THESE INDIVIDUALS!
(SHAME ON THESE PEOPLE FOR LETTING THEM GET AWAY WITH IT.)



Media Outreach

- Local media can be your most important ally in confronting union bannering.
- Subject to contractor's comfort level with additional exposure of the union banner.
- Types of outreach:
 - Op-eds and letters to the editor
 - Editorial board meetings; TV News
 - Paid advertising
 - Social media (Blogs, Facebook, etc)
 - Links to good stories/videos exposing bannering

The Washington Post

Outsourcing the Picket Line

Carpenters Union Hires Homeless to Stage Protests

By Keith L. Alexander
Washington Post Staff Writer
Tuesday, July 24, 2007



ONE MORE CHECKLIST FOR RESPONDING TO BANNERING AND RELATED TACTICS

- Make sure your house is in order
- Show your customers that you are responding
- Prepare a communications plan
- Explore all legal avenues with experienced counsel
- Cover all the bases: owners, employees, the public
- ABC can be your support group. Get help from your friends



Resources

- ABC National and chapters can help educate construction users and local media.
 - ABC National staff (conlin@abc.org; brubeck@abc.org)
 - Shameonunionbanners.com
 - Sample media campaigns
 - Case law and the Construction Legal Rights Foundation
 - Sample letters to owners, general public, employees



What else can ABC do to help?

- Information is being shared throughout the country
- Court actions are being pursued
- GIVE US YOUR IDEAS

