



Paper Weight

*Be It Email Or Hard Copy,
Proper Paperwork Can Save Contractors Trouble*

BY ANDY COLE

In the city where tax evasion finally brought down Al Capone, it's not always the "flashy" things that get the job done.

This is certainly true in the case of Union grievances and audits. While nothing guarantees a successful defense, keeping up with paperwork — while maybe not the most exciting concept in the world — is the best way to protect your business.

What it takes to maintain those records with vigilance has changed by leaps and bounds since the advent of regular email use, something Doug Anderson of Interior Construction Group (ICG) knows well. At a recent hearing in front of a Joint Grievance Board, Anderson was told by one contractor representative that his company had the best documentation he'd seen at a hearing. That was, in large part, due to the fact that ICG employees had saved emails going back almost six months on the subject of the grievance.

"We feel kind of funny taking credit for it, because back in the day before email we probably would have been in some trouble," Anderson said. "Were it not for the emails, we wouldn't have had much documentation.

"In the days where all we did were written warnings, we may not have been so good about keeping copies around. The moment we realized we needed to start building a case in the recent instance, we gathered all the emails on the subject. Those emails are easy to keep around and can tell an amazing story as long as you're organized."

Soon after an Association member encounters a grievance, a jurisdictional dispute or an audit, Denise Herdrich's phone is bound to ring. The Builders Association's Director of Labor indicates that no matter what the issue, the conversation with the grieved contractor turns to paperwork sooner rather than later.

"Obviously you don't want to go to arbitration, but if an employee complaint does evolve, having all paperwork in order is vital," Herdrich stated. "It's not guaranteed and having it might not convince the Joint Grievance Board or the Union, but I can tell you that not having it in order is a death sentence as far as the people on

that board are concerned. You've got to be able to show them proof that you did everything you were supposed to do as a contractor."

Record keeping isn't just good in case of a defense, however. As SmithAmundsen LLC Partner Bob Lessman points out, it could help your company see what it's doing wrong and cut some grievance-worthy infractions off at the source.

"If Laborers are operating Bobcats, they have a very limited role in being able to do that," Lessman said. "You could have a problem with the Operating Engineers if you have a Supervisor continually putting Laborers in that role, and good paperwork can help you avoid things like that.

"It can help you if there's a series of incidents where the same ironworker isn't wearing fall protection or if certain project managers aren't covering the cost of flagging. If you're keeping proper paperwork diligently, it allows you to stop problems before they become bigger problems."

Herdrich pointed out in a previous *Builder* article that companies should create a filing system and keep any records regarding discharging, suspending or laying off an employee. Copies of any warnings or violations should be sent to the Union, and internally any emails regarding the reasons for or build-up to the warnings or violations should be kept and catalogued until the matter is put to rest.

Even with the right paperwork, the Joint Grievance Board isn't the easiest experience in the world for a contractor. With the Union representatives siding against the contractor nearly 100 percent of the time and the contractor representatives pulling together in the opposite direction, appearing at hearings or in front of the Board can seem like a colossal waste of time.

Be that as it may, there can be serious consequences to not coming prepared.

"I think part of the problem is management representatives have a tendency to vote with the Union much more than the other way around," Lessman said. "Those management representatives may be looking for instances where they can vote with the Union to promote that sense of fairness. You have to give those management representatives a reason to vote for you, and if you don't come

prepared with the right paperwork you're inviting them not to."

Statistics from the Mid-America Regional Bargaining Association (MARBA) indicate that Joint Grievance Committees for Laborers, Operating Engineers, Auto Mechanics and Teamsters have heard well in excess of 300 cases since 2003. The 89 cases heard in 2008 were more than double the previous year's number. This year appears to be nearly as busy for those committees, as well, with 32 cases having been heard through July.

As the recession deepens and Unions look for every edge they can find for workers, the likelihood increases that your company will find itself in front of a Joint Grievance Committee.

"The possibility of these things makes it so important that you carefully document everything dealing with an employee," Anderson stated. "The tendency is to just talk to an employee without filing anything and sometimes you don't even want to do that, but keeping track of that paper trail has saved us on many occasions.

"There's that saying that the palest ink is better than the sharpest memory. Every situation is dramatically different, so you really never know what you're going to need. Proper organization of what you take down can be just as important as having the documentation to begin with."

Policies on how long to keep correspondence vary from company to company. Lessman states that it's crucial to have a set company

policy, but also says that it basically depends on the common sense of a contractor. The right attitude and a willingness to know what is and isn't in each contract can go a long way toward keeping things in order.

"I would say the biggest mistake contractors make is thinking they can get away with it," Lessman said.

"It's reckless to not respect the obligations that you have under the agreement. There's this 'me-against-them' mentality that fuels a lot of contractors, and it causes them to hide things they shouldn't hide or just ignore things that they're subject to under the agreement.

"What I would suggest for a lot of contractors is a company-wide file folder where you could dump anything relating to any issue regarding a Union employee, be it hard-copy or email. All of those things should at least cross the desk of the President or the COO so they can be in the loop, identify the potential problems and eliminate them."

It's amazing how much weight a little bit of paper can carry.

In Memoriam



Maureen Terry, former office manager at Takao Nagai Associates, lost her battle with cancer on July 12. Maureen was active in the Association and often attended meetings and Contractor Safety Forums. The Builders Association sends its deepest condolences to Maureen's family and friends.



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