THE REAL DEAL

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Will nonunion construction conquer the commercial market next?

Panel talks union strategies for taking back NYC

To compete with nonunion labor, union construction companies are increasingly making concessions. The problem, according to some, is that those cost savings are getting stuck at the subcontractor level and not trickling down to the project owners.

This was one of the central topics discussed on Thursday at a panel about the future of construction labor in the city. The event was the second held by the Midtown-based law firm Zetlin & De Chiara in response to the proliferation of open shop work sites in the city.

One of the panelists, Robert Sanna, executive vice president and head of construction at Forest City, noted that cost savings are not always spelled out in contracts.

"There's not a lot of transparency in those numbers," he said. "The challenge we have is trying to reconcile the practices of our industry, which is the subcontractors and vendors are generally in the middle between the labor portion and the owner/construction and trying to unearth and ensure that those savings are used to calculate the bids is probably the most critical first step."

Not everyone buys into this sentiment. Larry Roman, CEO of WDF, a heavy mechanical, plumbing and HVAC subcontractor, said that the concessions made often aren't quantifiable. Lou Coletti, president and CEO of Building Trades Employers' Association, also said he doesn't believe subcontractors are withholding cost savings, though he acknowledged that there are certain problems innate in residential project labor agreements (PLAs).

"Several years ago, it was the construction manager who wasn't passing the savings on, and that was dispelled," he said. "An owner probably did not reap the benefits that are outlined in a residential project labor agreement, and the single biggest reason is we couldn't get anybody to work for a 20 percent pay cut."

Gary LaBarbera, president of the Building and Construction Trades Council, asserted that the unions don't negotiate concessions so that subcontractors can profit from slashed labor wages. The concessions often pertain to creating blended-rate workforces, meaning more employees who are paid at a lower rate than the highly-skilled journeymen are added to a project.

He said, however, that one major problem is that union contractors are not offering the same kinds of deals on jobs with project labor agreements as they are on open shop projects. The mistake some trades are making, he said, is assuming that because a job with a PLA is a done-deal — i.e. will hire all union labor — they don't have to negotiate as rigorously.

"So, on jobs where they have no guarantee [of union labor], miraculously, they can be competitive with the nonunion," he said. "But on the [union] jobs, what we've experienced, we've actually seen those numbers go up."

Michael K. De Chiara
Co-Founding Partner
Zetlin & De Chiara LLP

This is all with the backdrop that the city, in the words of the panel's moderator Michael De Chiara, has seen a "tidal wave" of nonunion construction. Coletti blamed the shift on developers' loss of union loyalty. He said developers and owners are more interested in building and flipping properties than the quality of their products.

"They'll hire anybody, get the costs down. So the window leaks, the roof leaks, who cares? I'll sell it to someone else in five years, it's their problem," he said. "They're not not interested in the future of New York. They're interested in the return on their investment."

LaBarbera reminded the audience that open shop companies' encroachment on the market has been mostly limited to the residential sector. But a recent report released by the New York Building Congress found that while construction spending is expected to total $148 billion from 2017 to 2019, residential's contribution to that is expected to shrink. Roman referred to nonunion contractors as "the devil," saying that once the pace of residential construction cools, these companies will turn to commercial.

"Like cancer, they've come in on residential," Roman said. "When the residential market disappears, as it always does, where are they going to go? They aren't going to go away."

Sabrina Kanner, executive vice president design and construction at Brookfield Properties, noted that open shop offers a 20 percent per square foot savings, though she believes large-scale commercial projects will remain in union hands. Jay Badame, president and chief operating officer of AECOM Tishman, said that once an open shop contractor completes a 3-million-square-foot office project, it's "game over" for the union's hold on the sector.

Badame noted, however, that union companies are still regarded as the safer option. He cited a fatality at Brookfield Property's 1 Manhattan West in September. A 45-year-old worker, whose harness wasn't attached to anything, fell out of a bucket lift on the third floor of the tower. Badame said construction commenced at the site the next day, whereas another project in Lower Manhattan, where a fatality occurred the same day as Brookfield's incident, remains shut down. He didn't say the name of the site but seemed to be referring to Fortis Property Group's 161 Maiden Lane, a nonunion site.

"The Building Department sees that the new players in town, if there's an accident, they don't have a history, they don't have the same track record as we have," he said. "Money is important, but if you have a job that's shutdown for a couple of months, that 10 percent you saved is out the window, and you have to refile with the state, you have to redo estimates, bad things happen." ■