

# why Open Shop flourishes in Western Canada

BY BILL STEWART

THE OPEN SHOP approach is arguably the predominant labour relations strategy in use today across the landscape of western Canada's construction industry. But it wasn't always like this. Not long ago, companies relying on U.S.-affiliated craft unions to staff their projects were dominant. To understand how and why this came about, one must first examine the construction industry's peculiar human resource dynamics following World War II.

## The historical yet tenuous contractor-union partnership

The post-war period was a time of tremendous growth when the ranks of those working in the industry swelled. From 1951-61, the number of people working in construction occupations increased by 80,000 to 431,000. Between 1961-66, the number employed expanded a further 19%.

Because construction employment by definition is project based, the variable nature of employment made it likely that tradespeople would have many employers over their careers. During the post-war expansion, this factor made the industry ripe for the hiring hall or dispatch services provided by the U.S.-based Building Trades Unions (BTUs).

For some, it is curious that the stranglehold in supplying construction labour the BTUs ultimately achieved was secured through benign organizing strategies. For the most part, they expanded through top down organizing: by simply convincing executives to sign up their companies. And while questionable methods were sometimes used to convince these executives, many firms concluded there was no other practical alternative but to develop working relationships with the various BTUs.

This so-called contractor voluntary recognition had two effects. First, tradespeople found that being dispatched to job sites through hiring halls was an attractive and more secure way to find work. Accordingly, union membership numbers swelled. Second, with more outlets available for members to be dispatched to, union power increased. By the 1960s approximately 70 to 80% of the institutional, commercial and industrial construction being built throughout North America was done by contractors affiliated with the BTUs.

## Disparate loyalties

FOR MOST tradespeople at the time, working construction meant being organized through one of the BTUs. Moving from project to project and contractor to contractor, many workers developed stronger ties to their union than with the companies intermittently signing their pay cheques. Contractors had little difficulty with this because once a union worker was on-site, the company's responsibilities extended no further than collective agreement provisions. Under this regime, the industry's human resource dynamics were never designed to promote non-adversarial bargaining relationships with unions, nor an alternate social or economic contract between employers and individual tradespeople.

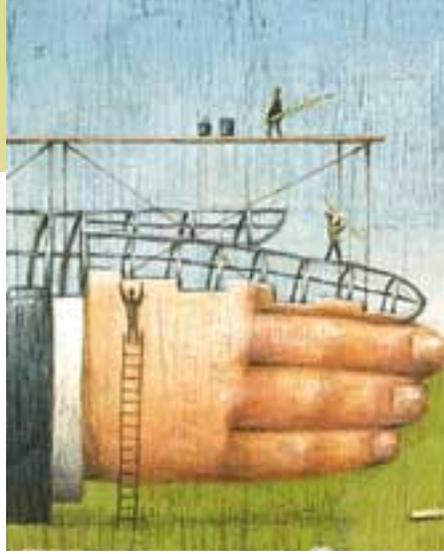
While the economy remained buoyant and prosperous, sufficient capacity existed to absorb increased costs and productivity losses associated with labour disputes or inefficient work rules and practices. But, as union power grew, irritants that were once acceptable grew into significant problems.

For many, these problems emanated from the disparate nature and character of employer-employee relationships. As University of Toronto Professor John Crispo noted in 1968, "The tenuous nature of the typical employer-employee relationship greatly influences the attitudes of both contractors and workers. Unlike employers in most other industries, many contractors feel no particular obligation towards most of their workers who in turn offer no loyalty to them."

Accordingly, observers and lawmakers alike became convinced that the best way to address industrial relations problems was to countervail the power and market share of the construction unions. From this, laws permitting contractors to form multi-employer organizations to bargain collectively on an industry-wide basis emerged. In retrospect, these laws created a structured process to mitigate but not alter the adversarial nature that industry labour relations were based on.

## Why the partnership broke down

PERHAPS NOWHERE were the problems between contractors and the BTUs more evident than in western Canada where an



## “THE TENUOUS NATURE OF THE TYPICAL EMPLOYER-EMPLOYEE RELATIONSHIP GREATLY INFLUENCES THE ATTITUDES OF BOTH CONTRACTORS AND WORKERS.”

industrial complex to exploit abundant natural resources was being built during the 70s and early 80s. Almost every bargaining round experienced strikes and/or lockouts.

Saskatchewan and Alberta's construction industries were especially mired in labour disputes. In the critical year of 1982, Saskatchewan's construction industry lost 363,000 person days to strikes and lockouts. Alberta's scene wasn't much better. Nonetheless, these strikes and lockouts resulted in unprecedented wage and benefit settlements being reached in the order of 25 to 30%. The magnitude of these increases proved to be the unionized sector's undoing when both economies fell into a swift and deep recession and many projects were shelved.

At the same time contractors and unions failed to resolve the fundamental problems that were alienating them from their clients. This served to exacerbate the frustrations of large and small construction owners who felt they had been held economic hostage for too long.

Saskatchewan Power's former president, George Hill, exemplified this frustration in a 1992 speech. Concerning construction of the Poplar River Power Station, he noted with vitriol, "That [no work stoppage] understanding meant nothing and there was wobble

after wobble. They didn't strike; they just didn't work. There was jurisdictional dispute after jurisdictional dispute. Between 1975 and 1981, 45% of the time, the project was at a standstill due to labour disputes. And this was an all-union site. Non-union contractors weren't allowed on the site. The cost overruns were so phenomenal, we quit publishing them because it was too embarrassing. Additional interest costs alone amounted to between \$18 and \$25 million. These were costs to the owner and with no recourse".

In Alberta, the situation wasn't much better. During construction of the multi-billion dollar Syncrude project for example, differences over whether the "height" in "height pay" was measured from where an electrician "reached" or "stood" and problems with "hot lunches" were responsible for two of at least 14 wildcat strikes. As contractors and unions quickly learned, when costs escalated and productivity declined, the unionized sector's control over the market place would dissolve.

## The non-union sector emerges as a legitimate alternative

THE PROBLEMS unionized contractors experienced simply didn't exist in the non-union sector. When recessionary forces dictated cost cutting throughout all industries, owner resolve to seek alternate non-union construction sources stiffened.

Typically, the labour component constitutes between 35 and 43% of total project costs. Given their displeasure with how they were being treated and the volatility in costs and scheduling, standard policies of awarding contracts to unionized contractors fell under scrutiny. As SaskPower's Hill stated, "Drastic changes were required in the building of major projects and in labour relations associated with such projects. In 1982, the construction trades were in full-flooded provincial strike. The Nipawin Hydroelectric station was just in the process of being started. The previous NDP government had awarded a contract for sewer and water services at a premium of 40% over the low qualified bid, simply so it could go to a union contractor."

Alberta owners were poised to make wholesale changes as well. In 1982, Construction Labour Relations – Alberta (CLR-A)

studied the rapidly emerging non-union construction sector's competitiveness. Their report concluded, "The non-union segment of the construction industry can clearly compete with the union segment. In fact, the non-union segment is making alarming inroads into markets traditionally dominated by the union segment."

Alberta's problems were perhaps best outlined in a January 1983 series of studies entitled "Urgent Concerns of the Unionized Segment of the Industry Affecting Survival in the Market Conditions of the 1980s". One study on gas processing plant construction – traditionally the domain of the unionized sector – noted that 93% of projects with a total value of approximately \$500 million were being awarded to non-union contractors. The study concluded that the time had come for, "Union Contractors and Union Members to join forces and take joint action to regain their competitive edge." In particular, it was noted that, "So long as the unions and management attempt to make the market conform to its established contracts, the danger exists that such policies will accelerate its rapid market decline."

And that is precisely what happened. Talk about change was one thing. Making it happen was another. In a November 1984 speech, a senior CLR-A official indicated that the cost increases negotiated in the 1982-84 agreements and BTU "intransigence" to maintain the status-quo had "irrevocably" changed the industry.

### A non-union era dawns

BY MOST ACCOUNTS, the recession unleashed competitive forces that led to an almost immediate reversal in market shares between union and non-union sectors. To understand the dynamics of this occurrence, it must first be appreciated that the 1982 agreements were negotiated when Alberta's construction volumes reached an unprecedented \$14.5 billion (1981) in value. By 1984, these volumes had plummeted to \$6.5 billion.

The impact on employment was equally dramatic. At peak activity, the industry employed over 120,000 people. Within two years, employment fell to 65,000. With industry unemployment soaring to 30%, tradespeople



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who hadn't either left the province or industry had little alternative but to accept employment terms and conditions the market was more willing to absorb.

For some unionized tradespeople, where gross rates exceeded market rates by as much as 38%, the market rate adjustment resembled a free-fall. This soon reflected in market sectoral shares. As the CLR-A official noted in 1984, "In 1982, our research indicated that unionized general contractors were getting around a 75-80% share of the urban markets. However, it became clear through late 1982 and early 1983 that the union-free contractors who traditionally had their wage rates tracking fairly parallel to union rates, did not pick up much of the increases that had been bargained in 1982. The result was that union-free contractors were capturing upwards of 80% of contract awards – more than a complete reversal of traditional market shares."

Despite this market reversal, the industry had historically experienced ups and downs leading many observers to think that the shift towards non-union construction was temporary. Even many years afterward, these observers believed that owners, contractors and tradespeople would abandon the open shop sector after the economy inevitably recovered. Others, however, saw the opportunity to bring a much-needed new orientation to construction labour relations. Recognizing a new era might be dawning, 17 contractors joined together to form the Alberta Merit Contractors Association in 1986.

### Building a new orientation in employer-employee relationships

THE CONTRACTORS forming the association chose the name Merit because they believed new approaches based on principles of merit were needed. To them, this meant construction contracts should be awarded according to qualifications such as low qualified bid price and bonding capacity regardless of whether or not a firm had a union affiliation.

They also believed that human resource practices should be governed by principles of merit. As opposed to the unionized sector's seniority system, this meant employees would be hired based on a variety of factors including



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individual qualifications and prior performance. Compensation would also be based on market place conditions and individual merit compared to what was simply a standardized collective agreement rate. These two conditions necessitated contractors and tradespeople developing more symbiotic relationships.

Many observers rejected such notions and clung to the view that construction employment precluded contractors and tradespeople from forming constructive binary employer-employee relationships. This is precisely what Merit's founders sought to challenge. Indeed, they set out to develop and implement a framework to nurture stronger ties between open shop contractors and individual tradespeople. And, when permanent employment relationships could not be maintained between contractors and employees, programs to facilitate tradespeople continuing to work within a merit-based system were designed.

The concept of building a loosely integrated open shop system was radically different from the traditional non-union approach where each company developed and implemented its own programs. Rather, this integration was based on voluntary corporate participation in a non-profit membership association. Through this vehicle, they could work co-operatively to develop and deliver

programs that would improve compensation, working conditions, training and employment stability for employees freely choosing to work on a non-union basis.

Besides paying competitive wages, Merit's founders also recognized that a full range of human resource programs and services was important to employees. The challenge was to make these programs responsive to the construction industry's peculiar needs. By joining together co-operatively, they felt that both economies of scale and synergies could be developed.

Perhaps nowhere was this approach more effective and evident than in the design and development of an industry-wide benefits plan. Merit took the approach that a common, cost-effective plan would be open to all contractors and all their employees, regardless of construction trade. And while membership in the association was voluntary for contracting companies, providing the plan to all employees from the first day of employment was compulsory.

### Maintaining a healthy supply of skilled tradespeople

THE VARIOUS BTUs have historically used their power and influence to control entry into the industry. Barriers such as high journeyman to apprentice ratios were negotiated into collective agreements or incorporated into apprenticeship regulations.

Merit members actively developed initiatives to increase their pool of skilled tradespeople and have been at the forefront of indenturing apprentices. So, when Alberta's government introduced tuition fees in 1998, Merit recognized the potential deterrent effect and became the first industry stakeholder to introduce a program to reimburse students for these fees. Merit's commitment to helping maintain a healthy supply of skilled tradespeople to the industry is highlighted by the \$800,000 allocated to the program during the current fiscal year.

Initiatives like this helped the Alberta construction industry meet recent labour supply demands when employment peaked at almost 150,000. And while the unionized sector struggles to cope with a rapidly ageing workforce, Merit members – through their

more open approaches – continue to employ an energetic workforce that is considerably younger by comparison. This was borne out in a recent study of workforce ages that showed that almost 64% of Merit’s workforce was under the age of 40 compared to 40% in the unionized sector.

### Getting the work and getting the work done

FLEXIBLY DEPLOYING a motivated multi-faceted workforce is a key reason why open shop contracting dominates western Canada’s commercial and institutional markets. It is also why inroads into major industrial projects worth hundreds millions of dollars are being made as well. The tables on this page show the clear economic advantages the open shop approach provides owners.

With only a marginal difference in the base pay rate, the flow through impact is quite considerable when total crew composition is evaluated.

Though cost advantages such as this are self-evident in explaining the benefits to owners, the benefits to employees may be less obvious. The simple fact is that with upwards of 80% of the commercial and institutional construction projects being done on an open shop basis, this approach has replaced the BTUs in providing viable and stable employment opportunities to tradespeople. A 1993 study found that the average British Columbia BTU member worked union construction for an average of 17.2 weeks compared to an open shop tradesperson who worked just under an average of 40 weeks per year.

According to various surveys, this has unquestionably helped build better employer-employee relations. For example, in one survey of Alberta open shop workers, 90% of respondents indicated they felt a sense of accomplishment. Perhaps the best satisfaction indicator is demonstrated by a reported three quarters of respondents who indicated they would recommend their company to friends and associates looking for work. While not perfect, these kinds of responses demonstrate how far the merit approach has taken the industry since the acrimonious 1980s.

This in turn has led to increased owner satisfaction. George Hill, for example, noted,

BASE RATE & BENEFITS (PIPEFITTER)				
Building Trade Union Pipefitters Local 488	STRAIGHT TIME		OVER-TIME	
	RATE	AMT	RATE	AMT
<sup>1</sup> Base Rate		\$28.82	1.5	\$49.23
Safety Bonus		\$ 0		\$ 0
Vacation Pay	6%	\$1.73	1.5	\$2.59
Statutory Holiday Pay	4%	\$1.15	1.5	\$1.73
<sup>2</sup> WCB	3.7%	\$1.07	1.5	\$1.60
CPP	3.9%	\$1.12	1.5	\$1.69
EI	3.36%	\$0.97	1.5	\$1.45
<sup>3</sup> Health & Welfare		\$1.61	1.5	\$2.42
<sup>4</sup> Pension		\$4.46	1.5	\$6.69
Training Funds		\$0.48	1.0	\$0.48
Market Recovery Fund		\$0.40	1.5	\$0.60
<b>Total Rate</b>		<b>\$41.81</b>		<b>\$62.48</b>

BASE RATE & BENEFITS (PIPEFITTER)				
Open Shop Construction	STRAIGHT TIME		OVER-TIME	
	RATE	AMT	RATE	AMT
Base Rate		\$27.00	1.5	\$40.05
Safety Bonus		\$ 0.25		\$ 0.25
Vacation Pay	6%	\$1.62	0	\$0
Statutory Holiday Pay	4%	\$1.08	0	\$0
WCB	3.7%	\$1.00	1.5	\$1.48
CPP	3.9%	\$1.05	1.5	\$1.56
EI	3.36%	\$0.91	3.36	\$1.35
Health & Welfare		\$0.60	1.0	\$0.60
Pension		\$1.25	1.0	\$1.25
<sup>5</sup> Training Funds		\$0	1.0	\$0
Market Recovery Fund		\$0	1.0	\$0
<b>Total Rate</b>		<b>\$34.76</b>		<b>\$46.54</b>

CREW RATE 12 MAN CREW: STRAIGHT TIME			
Building Trade Union	QTY	RATE	EXTENSION
Journeyman	8	\$41.81	\$334.48
Apprentice 80%	1	\$33.45	\$33.45
Support craft 90%	2	\$37.63	\$75.26
Foreman 110%	1	\$45.99	\$45.99
<b>Totals</b>	<b>12</b>		<b>\$489.18</b>
Avg cost/hour			\$40.77
% of journeyman rate			97.5%

CREW RATE 12 MAN CREW: STRAIGHT TIME			
Open Shop	QTY	RATE	EXTENSION
Journeyman	5	\$37.76	\$173.80
Apprentice 80%	3	\$27.81	\$83.43
Support craft 90%	3	\$31.28	\$93.84
Foreman 110%	1	\$38.24	\$38.24
<b>Totals</b>	<b>12</b>		<b>\$389.31</b>
Avg cost/hour			\$32.44
% of journeyman rate			93.3%

<sup>1</sup> Collective agreement rates as of November 1, 2002. <sup>2</sup> Industry average rates. <sup>3</sup> Collective agreements specify Health & Welfare payments to be submitted at 1.5X for overtime hours. <sup>4</sup> Pension contributions on overtime hours are at 1.5X. <sup>5</sup> Non-union training assessments are included in benefit plan costs.

“Part of the reason for our success was close attention to the cost of construction. We achieved excellent results accomplished by relying more and more on the private sector and adopting a complete policy of open construction sites.”

Westcoast Energy, another company spending hundreds of millions annually on construction, also echoed these sentiments. In a 1995 submission to B.C.’s Construction Industry Review Panel, the company noted: “Many Westcoast projects suffered from drawn out schedules, low productivity, work

slow downs and stoppages, poor labour morale and high costs. Contractors were often unable to control their work forces under their labour agreements. Westcoast and other owners were expected to stand by and simply pay for inefficiency and delay. The customer’s needs and wishes were being ignored. ... There had to be a better way and the open shop sector has shown that to be the case. Our projects are done in less time, more efficiently and at least as safely. The quality of work done by the open shop sector is equal, if not superior, to work done by building trade contractors.”

Over the years, open shop contractors have demonstrated their capabilities in every market. This is evident on small projects as well as projects involving hundreds of millions of dollars such as skyscrapers and the \$700 million Ekati diamond mine in the Northwest Territories. With the unionized sector almost exclusively focussed on major industrial projects marred by labour supply problems and enormous cost overruns, there are good reasons behind current speculation that a multi-billion dollar oil sands project may go forward without a union-only labour agreement.

### Here to stay

A WILLINGNESS TO compete and a desire to foster good employer-employee relationships are the main reasons open shop flourished and continues to flourish throughout western Canada. With a viable non-union option to consider, industry clients are now expressing more confidence that they are getting better value from the industry.

As George Hill noted in his speech, “I’m firmly of the opinion that the open site concept saved us hundreds of millions of dollars at SaskPower (over nine years). I would estimate the savings to be 15 to 20% of the otherwise total cost of capital projects. The interesting part is that this saving did not come at the expense of the working man.” In a seminal paper on the Merit Shop Contractors Association in 1987, Industrial Relations Professor E.G. Fischer of the University of Alberta concluded by asking, “Is the merit-shop contractor movement here to stay or merely a transitional aberration?” After almost 20 years of development, the unequivocal answer is that open shop construction is here to stay. ☐