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LABOR & EMPLOYMENT LAW COUNCIL
34TH ANNUAL CONSTRUCTION LABOR LAW SYMPOSIUM
PRE-SYMPOSIUM WORKSHOP ON DOUBLE-BREASTING IN THE
CONSTRUCTION INDUSTRY**

MAY vs. CAN: THE FORMATION OF DOUBLE-BREASTED OPERATIONS

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Introduction

While there is no legal prohibition against operating both union-signatory and non-union businesses in the same industry, the key question to answer before attempting to do so is not “*may*” you, but “*can*” you. This is not just a grammatical distinction, but the difference between legal permission (i.e., *may* you) and the practical commitment to do so in a way that does not create significant legal and financial liabilities for both entities (i.e., *can* you). The purpose of this paper is not to encourage or discourage the formation of double-breasted operations, but to educate (warn) those considering such operations that do so lawfully requires more than just simply establishing a separate legal entity and using a different mailing address.

“Double-Breasting” has been defined by the courts as the establishment and operation of two companies, one which hires strictly union employees and bids on jobs from contractors who require union subcontractors, and one which hires strictly nonunion employees and which bids on jobs from contractors who require nonunion subcontractors: Florida Marble Polishers Health & Welfare Trust Fund v. Edwin M. Green, Inc., 653 F.2d 972, 976 n. 7 (5th Cir. 1981), cert. denied, 456 U.S. 973 (1982).

The major advantage of a double-breasted operation is that it allows the union firm to continue to work on union jobs with a union workforce, while the nonunion firm operates without the restrictions imposed by a collective bargaining agreement, at substantial cost savings, outbidding other union firms, and with flexibility in management. These advantages accrue if double-breasting is accomplished successfully because the nonunion firm is not obligated to apply the contract of the union firm to its employees; it is not liable for the unfair labor practices of the union firm; and it may be able to claim protection under the secondary boycott provisions of the National Labor Relations Act.

Key Concept in Establishing Double-Breasted Operations

The Board and the courts have developed a two-step approach in determining whether separate nonunion and union firms can be established successfully.¹

The first step is determining if the two companies are a “single employer” or two separate employers. If they are a single employer, then the second step is to determine if they comprise separate bargaining units – one unit for bargaining or two.

If the two firms are found to be separate employers, and not a single employer, the nonunion firm is not bound by the union firm's collective bargaining agreement nor must it recognize or bargain with the union. As a result, both the union firm and the nonunion firm will

¹ This paper discusses the concurrent establishment and operation of separate businesses, which is different than the discontinuance of one business and the subsequent reestablishment of a new business in order to evade labor obligations – i.e., an “alter ego” analysis – as distinguished below.

be successful in resisting an unfair labor practice charge or a claim under the collective bargaining agreement that the union represents the nonunion firm's employees. In addition, both firms would be successful in a unit clarification proceeding before the Board if the union claims that the employees of the nonunion firm constitute an accretion to the unit of employees in the union firm. Finally, a union's unfair labor practice charge against either the union firm or the nonunion firm, for refusing to bargain over the operation of the nonunion firm, will be unsuccessful (except to the extent that the union requests, and the union firm refuses to provide, information regarding the establishment of the double-breasted operation. This is discussed in more detail below).

Even if the union firm and nonunion firm are found to be a single employer, however, the nonunion firm will have no obligation to apply the existing contract to its employees if the combined employees of both firms do not constitute a single appropriate unit for bargaining. Peter Kiewit Sons' Co., 231 NLRB 76 (1977).

Conversely, if the two firms are deemed to be a single employer, and if the combined employees of both firms are deemed to be an appropriate unit for bargaining, the nonunion firm will have an obligation to apply the existing contract to its employees. Naccarato Construction Company, 233 NLRB 1394 (1977).

**Factors Considered in Determining
Single Employer Status**

In Radio Union Local 1264 v. Broadcast Service of Mobile, Inc., 380 U.S. 255 (1965), the United States Supreme Court set forth four controlling factors for determining whether two enterprises constitute a "single employer." These factors are:

- (1) the interrelation of operations of the enterprises;
- (2) common management of the enterprises;
- (3) centralized control of labor relations; and
- (4) common ownership of the enterprises.

The Court said that no one factor is controlling, but that the "totality of circumstances" must be looked at in each case to determine whether two enterprises are in fact a single employer. Subsequent case law has clearly established that, while all four factors are significant, the third factor, centralized control over labor relations, is the most important. See Plumbers & Pipe Fitters Local 343 v. Nor-Cal Plumbing, 48 F.3d 1465, 1471 (9th Cir. 1994), cert. denied, 516 U.S. 912 (1995); Covanta Energy Corp., 356 NLRB 706, 726 (2011), quoting RBE Electronics of S.D., 320 NLRB 80 (1995) ("Centralized control of labor relations is of particular importance because it tends to demonstrate 'operational integration.'").

1. **Interrelation of Operations of Enterprises**

Some degree of interrelation of the operations of double-breasted enterprises is expected. However, the closer the operations of the enterprises are intertwined, the more likely it will be that the enterprises will be considered a single employer. Factors which would tend to establish

interrelation of operations of enterprises are: (1) shared bank accounts, accounting records and checking accounts; (2) financial interdependence, such as the union firm providing the money to the nonunion firm for its start-up costs, shared lines of credit, loaning money at less than the fair market rate, or one firm paying the bills or compensating the other firm's employees; (3) shared hourly employees, either employees working for both firms simultaneously, or employees transferred from one firm to the other; (4) shared office personnel; (5) shared offices, a single telephone number, shared stationery and the like; (6) shared tools and equipment, or loans of tools and equipment at less than the fair rental value; (7) bidding on the same job; (8) reliance by one firm on work from the other firm, such as through referral or subcontracting; and (9) loss of work from the union firm to the nonunion firm. Ref-Chem Co., 169 NLRB 376 (1968), enf. Denied 418 F.2d 127 (5th Cir. 1969); Laborers' International Union, Local 423, 183 NLRB No. 91 (1970); Glendora Plumbing, 165 NLRB 101 (1967).

2. Common Management of Enterprises

Once again, some amount of common management of the union and nonunion enterprises is expected in a double-breasted operation. Courts and the Board have found two enterprises to be separate, not a single enterprise, even where top management of both firms are identical. Gerace Const., Inc., 193 NLRB 645 (1971). However, the Board and courts look more closely when the day-to-day management of the firms are performed by the same people. The Board and the courts are in general agreement (with some exceptions) that the exercise of day-to-day control must be actual, as contrasted with potential control. Therefore, common management

will not be found simply because there are interlocking directorates with the potential for common management. However, where the same people run the day-to-day affairs of both enterprises, common management will be found. Royal Typewriter Co., 209 NLRB 1006 (1974) enf'd 533 F.2d 1030 (8th Cir. 1976).

3. **Centralized Control Over Labor Relations**

This is sometimes described as the most significant factor in determining whether two enterprises are separate or are a single employer. In Local 627, Operating Engineers (Peter Kiewit Sons' Co.), 206 NLRB 562 (1973) enf. denied 518 F.2d 1040 (D.C. Cir. 1975), affirmed in part, vacated in part sub. nom. South Prairie Construction Company v. Local 627, Operating Engineers, 425 U.S. 800 (1976) on remand 231 NLRB 76 (1977) enf'd. 595 F.2d 844 (D.C. Cir. 1979), the issue raised was whether two construction contractors owned by the same company were a single employer. Although the Board initially determined that the two enterprises were not a single employer, the District of Columbia Court of Appeals found otherwise because of the degree of control over the labor relations of the nonunion firm exercised by the union firm. The D.C. Circuit found that the union firm exercised control over the labor relations of the nonunion firm by dictating wages, hours and benefits.

In contrast, in Frank N. Smith Associates, 194 NLRB 212 (1971), the Board found that the two firms were not a single enterprise, based in part on the fact that important labor relations matters at the two firms were handled by different people. This was also a determining factor in Gerace Construction, Inc., supra.

4. **Common Ownership of Enterprises**

As with common management, some degree of common ownership is expected and consistent with double-breasted operations, and common ownership alone is not fatal to a finding of separate employee status. However, the Board and courts have found significant in finding a single employer the fact that the nonunion firm was a subsidiary of the union firm. See Local 627, Operating Engineers, supra, 518 F.2d 1040. Where, however, the two firms are separate corporations, separate employer status has been found even where ownership of the firms overlaps. Frank N. Smith Associates, Inc., supra; Gerace Construction, Inc., supra.

Appropriate Unit For Bargaining

As noted above, even if the union and nonunion firms are deemed to be a single employer, that employer does not necessarily have to apply an existing collective bargaining agreement to the employees of the nonunion firm. Such obligation is predicated on an additional finding that the employees of both firms, when combined, constitute an appropriate unit for bargaining. As the Board said in Peter Kiewit Sons', 231 NLRB No. 13 (1977):

The ultimate determination is thus resolved by weighing all the factors relevant to the community of interests of the employees. Where, as here, we are concerned with more than one operation of a single employer, the following factors are particularly relevant: the bargaining history; the functional integration of operations; the differences in the types of work and the skills of employees; the extent of centralization of management and supervision, particularly in regard to labor relations, hiring, discipline and control of day-to-day operations; and the extent of interchange and contact between the groups of employees.

231 NLRB at 77.

In that case, although both companies were engaged in highway construction and their employees had the same skills, the Board found that the units should remain separate. This conclusion was based on the fact that the two companies had no common history of bargaining. In addition, neither company subcontracted work to the other company, each company used its own tools and raw materials, there was no interchange of employees, and control of day-to-day operations was entirely separate.

In contrast, in Naccarato Construction Company, 233 NLRB No. 196 (1977), the Board found that three enterprises were a single employer and that the single employer constituted an appropriate unit for bargaining. The employer in that case operated three carpentry contracting units, one of which was an open shop. The Board held that all three constituted a single employer because the companies had common ownership, management, and control of labor relations. Furthermore, the companies used the same office, business address, and tools and equipment. Employees and funds were also transferred often among the three businesses. The Board determined that the employer-wide unit was appropriate for bargaining since the work of the employees was highly intertwined.

Alter-Ego Status Distinguished

As we discuss the formation of double-breasting entities, it is important to distinguish the open and concurrent establishment and operation of separate businesses (double-breasting, single-employer analysis) from the closure and reestablishment of a business for the purpose of

evading collective bargaining obligations (alter-ego analysis). Although the single-employer and alter-ego analyses evolved along similar lines, they are now considered separate concepts. As stated in NLRB v. Hospital San Rafael, Inc., 42 F.3d 45, 50 (1st Cir. 1994), enforcing 308 NLRB 605 (1992), cert. denied, 516 U.S. 927 (1995).

One concept, known colloquially as the alter ego doctrine, says that in certain situations one employer entity will be regarded as a continuation of a predecessor, and the two will be treated interchangeably for purposes of applying labor laws. The easiest example is a case where the second entity is created by the owners of the first for the purpose of evading labor law responsibilities; but identity of ownership, management, work force, business and the like are also relevant. See C.E.K. Indus. Mechanical Contractors, Inc. v. NLRB, 921 F.2d 350 (1st Cir.1990).

A second rubric—the "single employer" doctrine—has its primary office in the case of two ongoing businesses which the NLRB wishes to treat as a single employer on the ground that they are owned and operated as a single unit. Penntech Papers, Inc. v. NLRB, 706 F.2d 18 (1st Cir.), cert. denied, 464 U.S. 892, 104 S.Ct. 237, 78 L.Ed.2d 228 (1983). Most of the alter ego criteria remain relevant but motive is normally considered irrelevant. The consequences of single employer and alter ego status are not necessarily the same. See C.E.K., 921 F.2d at 354.

Thus, the alter-ego doctrine is therefore applied when an employer is attempting to evade its collective bargaining obligations, as a "disguised continuance" and the two-step single employer and appropriate bargaining unit tests are not applicable. See C.E.K., 921 F.2d at 354. Instead, if alter-ego status is conferred, an employer is automatically required to observe the terms of the applicable collective bargaining agreement, without regard to the appropriateness of the bargaining unit. The factual analysis is similar, however, and focuses on the management,

business purpose, operations, equipment, customers, supervision, and ownership. See Crawford Door Sales Co., 226 NLRB 1144 (1976).

**Duty to Furnish Unions with Information
Regarding Double-Breasted Operations**

In NLRB v. Leonard B. Hebert, Jr. & Co., Inc., 696 F.2d 1120 (5th Cir. 1983), the Fifth Circuit Court of Appeals held that, where a union has some reason to believe that the contractor with whom it has a contract has established or intends to establish a double-breasted operation, the contractor violates Sections 8(a)(1) and (5) of the Act by refusing to provide the union with requested information concerning that operation. In Hebert, the union learned that several construction contractors had established nonunion enterprises. Accordingly, it requested information from those contractors concerning the existence of common management or ownership between the companies and whether they shared customers or equipment, all in an effort to determine the extent of the affiliation between the contractors and the nonunion enterprises. The court, agreeing with the Board, held that the contractors were obligated to furnish the union with this information.

Similarly, in NLRB v. PDK Investments, L.L.C., 433 F. App'x 297 (5th Cir. 2011), the Union learned that PDK, an electrical contractor in the construction business, was operating an "alter ego" that employed non-union employees. Therefore, the Union sent PDK a questionnaire with seventy-nine questions seeking detailed information about PDK's relationship with its purported non-union affiliate. PDK responded by calling the letter a "fishing expedition," and

refused to provide the Union with any information. The court agreed with the Board that PDK was required to provide the Union with the requested information. As such, the court granted the Board's application for enforcement. See also In re Cannelton Industries, Inc., 339 NLRB 996 (2003) (holding that a union is entitled to information on single employer status if it has an objective, factual basis for the request).

Attached as Appendix A is a sample questionnaire of questions that are representative of those routinely asked by unions seeking to uncover a single employer structure. As set forth above, the Board has generally required the union "breast" to answer these questions.

Attached as Appendix B is a list of practical considerations in establishing double-breasted operations.

Attached as Appendix C is a graphical illustration of double-breasted operations and responsibilities.

Appendix A

Note: (The Union firm is identified as "A" and the non-union firm is identified as "B" in the following questions.)

QUESTIONNAIRE

1. A. Describe the type of business in which your company engages.
 B. Describe the type of business in which the non-union company engages.
2. A. Define the geographic area in which your company does business.
 B. Define the geographic area in which the non-union company does business.
3. A. State the business address(es) and identify all office locations of your company.
 B. State the business address(es) and identify all office locations of the non-union company.
4. A. Identify your company's post office box(es) by number and location.
 B. Identify the non-union company's post office box(es) by number and location.
5. A. Identify your company's business phone number(s) and directory listing(s).
 B. Identify the non-union company's business phone number(s) and directory listing(s).
6. A. Identify the banking institution, branch location, and account number of your company's bank account(s).
 A. Identify the banking institution, branch location, and account number of the non-union company's bank account(s).
7. A. Identify the banking institution, branch location, and account number of your company's payroll account(s) not identified above.
 B. Identify the banking institution, branch location, and account number of the non-union company's payroll account(s) not identified above.

8.
 - A. Identify where and by whom your company's accounting records are kept.
 - B. Identify where and by whom the non-union's company's accounting records are kept.
9.
 - A. Identify your company's principal accountant.
 - B. Identify the non-union company's principal accountant.
10.
 - A. Identify where and by whom your company's corporate records are kept.
 - B. Identify where and by whom the non-union company's corporation records are kept.
11.
 - A. Identify where and by whom your company's other business record books are kept.
 - B. Identify where and by whom the non-union company's other business record books are kept.
12.
 - A. Identify your company's principal bookkeeper.
 - B. Identify the non-union company's principal bookkeeper.
13.
 - A. Identify your company's principal payroll preparer.
 - B. Identify the non-union company's principal payroll preparer.
14.
 - A. Identify your company's contractor license number for states where it does construction business.
 - B. Identify the non-union company's contractor license number for states where it does construction business.
15.
 - A. Identify the carrier and policy number for your company's workers compensation insurance.
 - B. Identify the carrier and policy number for the non-union company's workers compensation insurance.
16.
 - A. Identify the carrier and policy number for your company's other health insurance program(s).

- B. Identify the carrier and policy number for the non-union company's other health insurance program(s).
- 17.
 - A. Identify your company's federal tax payer identification number.
 - B. Identify the non-union company's federal tax payer identification number.
- 18.
 - A. Identify where and by whom your company's federal tax returns are kept.
 - B. Identify where and by whom the non-union company's federal tax returns are kept.
- 19.
 - A. Identify your company's other federal or state taxpayer identification numbers.
 - B. Identify the non-union company's other federal or state taxpayer identification numbers.
- 20.
 - A. Identify where and by whom your company's other federal or state tax reports are kept.
 - B. Identify where and by whom the non-union company's other federal or state tax reports are kept.
- 21.
 - A. Identify amount(s) involved, reason(s) for, and date(s) of transfer of any funds between your company and the non-union company.
- 22.
 - A. Identify source(s) and amount(s) of your company's line(s) of credit.
 - B. Identify source(s) and amount(s) of the non-union company's line(s) of credit.
- 23.
 - A. Identify amount(s) involved and date(s) when your company has operated its capital with a guarantee of performance by the non-union company.
 - B. Identify amount(s) involved and date(s) when the non-union company has operated its capital with a guarantee of performance by your company.
- 24.
 - A. Identify business(es) to whom your company rents, leases, or otherwise provides office space.
 - B. Identify business(es) to whom the non-union company rents, leases, or otherwise provides office space.

25. A. Identify the calendar period and terms by which your company provides office space to the non-union company, or is provided with office space by the non-union company.
26. A. Identify your company's building and or office suppliers.
B. Identify the non-union company's building and or office suppliers.
27. A. Identify by item(s) purchased, date(s) of purchase, and dollar volume of purchase(s) those building and or office supplies not purchased separately by your company and the non-union company.
28. A. Identify business(es) to whom your company sells, rents, or leases its (a) operating equipment, (b) office equipment, (c) construction equipment, or (d) tools.
B. Identify business(es) to whom the non-union company sells, rents, or leases its (a) operating equipment, (b) office equipment, (c) construction equipment, or (d) tools.
29. A. Identify business(es) that use your company's (a) tools or (b) equipment.
B. Identify business(es) that use the non-union company's (a) tools or (b) equipment.
30. A. Identify business(es) to whom your company buys, rents, or leases its equipment.
B. Identify business(es) from whom the non-union company buys, rents, or leases its equipment.
31. A. Identify those equipment transactions that your company arranges by written agreement.
B. Identify those equipment transactions that the non-union company arranges by written agreement.
32. A. Regarding equipment transactions between your company and the non-union company, identify the purchase, rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.
33. A. Regarding equipment transactions between your company and business(es) separate from the non-union company, identify the purchase,

rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.

34. A. Regarding equipment transactions between the non-union company and business(es) separate from your company, identify the purchase, rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.
35. A. Identify those of the following services that are provided to the non-union company by or at your company.
- (a) administrative
 - (b) bookkeeping
 - (c) clerical
 - (d) detailing
 - (e) drafting
 - (f) engineering
 - (g) estimating
 - (h) managerial
 - (i) patternmaking
 - (j) sketching
 - (k) other
36. A. Identify those of the following services that are provided to your company by or at the non-union company.
- (l) administrative
 - (m) bookkeeping
 - (n) clerical
 - (o) detailing
 - (p) drafting
 - (q) engineering
 - (r) estimating
 - (s) managerial
 - (t) patternmaking
 - (u) sketching
 - (v) other
37. A. Identify where your company advertises for customer business.
- B. Identify where the non-union company advertises for customer business.
38. A. Identify your company's customers.

- B. Identify the non-union company's customers.
- 39.
- A. Identify customers your company has referred to the non-union company.
 - B. Identify customers the non-union company has referred to your company.
- 40.
- A. What customers of the non-union company are now or were formerly customers for your company.
- 41.
- A. Regarding customers identified above as common to your company and the non-union company, state the calendar period and dollar volume of work performed for the customer by your company.
 - B. Regarding customers identified above as common to your company and the non-union company, state the calendar period and dollar volume of work performed for the customer by the non-union company.
- 42.
- A. State the dollar volume of business per job performed by your company.
 - B. State the dollar volume of business per job performed by the non-union company.
- 43.
- A. Does your company negotiate jobs to obtain work?
 - B. Does the non-union negotiate jobs to obtain work?
- 44.
- A. Does your company bid jobs to obtain work?
 - B. Does the non-union company bid jobs to obtain work?
- 45.
- A. Identify those persons who bid and or negotiate your company's work.
 - B. Identify those persons who bid and or negotiate the non-union company's work.
- 46.
- A. State the dollar volume minimum and or maximum (if any) as established by law or regulation, that your company may bid on public works projects.
 - B. State the dollar volume minimum and or maximum (if any) as established by law or regulation, that the non-union company may bid on public works project.

47. A. Identify by customer, calendar period, and dollar volume any job(s) on which your company and the non-union company have bid competitively.
48. A. Identify by customer, calendar period, and dollar volume any work which your company has subcontracted to, or received by subcontract from the non-union company.
49. A. Identify subcontract work arranged by written agreement between your company and the non-union company.
50. A. State the reason for each subcontract let by your company.
B. State the reason for each subcontract let by the non-union company.
51. A. Identify by customer, calendar period, and dollar volume any projects on which your company has succeeded, or been succeeded by, the non-union company.
52. A. Identify work your company performs on the non-union company's products.
B. Identify work the non-union company performs on your company's products.
53. A. Identify where your company advertises for employee hires.
B. Identify where the non-union company advertises for employee hires.
54. A. Identify by job title or craft position the number of employees employed by your company per pay period.
B. Identify by job title or craft position the number of employees employed by the non-union company per pay period.
55. A. Identify the skills that your company's employees possess.
B. Identify the skills that the non-union company's employees possess.
56. A. Identify where your company's employees report for work.
B. Identify where the non-union company's employees report for work.

57. A. Identify by job title or craft position and respective employment dates those employees of your company who are or have been employees at the non-union company.
58. A. Identify by job title or craft position and transfer dates those employees of the non-union company who are or have been employees at your company.
59. A. Identify by job title or craft position and transfer dates those employees otherwise transferred between your company and the non-union company.
60. A. Identify projects of each company on which these employees were working at the time of transfer.
61. A. Identify your company's (a) supervisors, (b) job superintendents, and (c) forepersons or other supervisory persons with authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, rewarded, or discipline other employees, or responsible to direct employees, or to adjust their grievances, or effectively to recommend such action.
- B. Identify the non-union company's (a) supervisors, (b) job superintendents, and (c) forepersons or other supervisory persons with authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsible to direct employees, or to adjust their grievances, or effectively to recommend such action.
62. A. Regarding those supervisory persons described above as common to your company and the non-union company, identify the period(s) of employment with each company.
63. A. Identify your company's personnel ever authorized to supervise the non-union company's employees.
64. A. Identify by project involved, personnel involved, and date of event, any occasion when your company's personnel performed a supervisory function for the non-union company.
- B. Identify by project involved, personnel involved, and date of event, any occasion when the non-union company's personnel performed a supervisory function for your company.

65. A. Identify your company's managerial personnel having authority to formulate and effectuate management policies or otherwise able to recommend or to exercise discretionary action within or even independently of established policy.
- B. Identify the non-union company's managerial personnel having authority to formulate and effectuate management policies or otherwise able to recommend or to exercise discretionary action within or even independently of established policy.
66. A. Identify your company's representatives who have authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline supervisory personnel, or responsible to direct supervisory personnel, or to adjust their grievances, or effectively to recommend such action.
- B. Identify the non-union company's representatives who have authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline supervisory personnel, or responsible to direct supervisory personnel, or to adjust their grievances, or effectively to recommend such action.
67. A. Identify your company's representatives otherwise actively involved with day-to-day management or operations.
- B. Identify the non-union company's representatives otherwise actively involved with day-to-day management or operations.
68. A. Identify by title and respective dates of employment those managerial personnel of your company ever employed by the non-union company.
- B. Identify by title and respective dates of employment those managerial personnel of the non-union company ever employed by your company.
69. A. Describe your company's compensation program including employee wage rates.
- B. Describe the non-union company's compensation program including employee wage rates.
70. A. Describe your company's fringe benefits program.

- B. Describe the non-union company's fringe benefits program.
- 71.
 - A. Describe your company's labor relations policy.
 - B. Describe the non-union company's labor relations policy.
- 72.
 - A. Identify your company's representative(s) who establish or otherwise control labor relations policy.
 - B. Identify the non-union company's representative(s) who establish or otherwise control labor relations policy.
- 73.
 - A. Identify your company's labor relations representative(s).
 - B. Identify the non-union company's labor relations representative(s).
- 74.
 - A. Identify your company's legal counsel on labor relations matters.
 - B. Identify the non-union company's legal counsel on labor relations matters.
- 75.
 - A. Identify your company's membership status in the Associated General Contractors.
 - B. Identify the non-union company's membership status in the Associated General Contractors.
- 76.
 - A. Identify your company's membership status in any other employer association.
 - B. Identify the non-union company's membership status in any other employer association.
- 77.
 - A. Identify your company's officers.
 - B. Identify the non-union company's officers.
- 78.
 - A. Identify your company's directors.
 - B. Identify the non-union company's directors.
- 79.
 - A. Identify place(s) and date(s) of your company's directors meetings.

- B. Identify place(s) and date(s) of the non-union company's directors meetings.
- 80.
 - A. Identify your company's owners and or stockholders.
 - B. Identify the non-union company's owners and or stockholders.
- 81.
 - A. Identify the ownership interest held among your company's owners and or stockholders.
 - B. Identify the ownership interest held among the non-union company's owners and or stockholders.

Appendix B

**Practical Considerations in
Establishing Double-Breasted Operations**

(1) Ownership of Operations – The new firm should be a separate corporation. It should not be a partnership or a subsidiary of the union firm. While owners of the two firms may be identical, there should be some degree of difference in ownership if such is possible.

(2) Financial Control of Enterprises – The new firm should not derive its start-up costs or initial capitalization from the union firm if at all possible. In addition, intercompany loans and advances should be avoided if possible. To the extent that such loans are advanced, they should be made at the fair market rate.

(3) Accounts – The firms should maintain separate bookkeeping and checking accounts. In addition, payroll accounts should be separate.

(4) Offices – The firms should maintain separate offices, with separate telephone numbers, stationery, and office staffs if at all possible. If separate offices are not possible, each firm should have its own clerical staff (or if shared staff, then each should pay its pro rata share), and each should maintain separate telephone number and have separate stationery.

(5) Tools and Equipment – Each firm should have its own tools and equipment if possible. If this is not possible, the firm using the other firm's tools and equipment should pay the fair rental value for the use of such tools and equipment.

(6) Employees –

(a) Hourly Employees – Each firm should hire hourly employees separately, through separate sources. Further, there should be no shared hourly employees, that is, employees who work for both firms. In addition, the firms should not involuntarily transfer hourly employees between firms. One-time voluntary transfers are permissible, but should be avoided if possible and are not encouraged.

(b) Supervisory personnel – Supervisory personnel should also be hired separately through separate sources. In addition, these employees should not be shared between the firms, nor should they be transferred from one firm to the other.

(7) Labor Relations Matters – It is critical that different people establish and administer labor relations policies. The labor relations manager of the nonunion firm should be completely independent from the union firm, and should hold no position with that union firm. Similarly, the labor relations manager of the union firm should hold no position in the nonunion firm. Such persons responsible for establishing labor relations should not be transferred between firms. Labor relations policies should be established independently while it is expected that wages, hours, and working conditions will be different at the union and nonunion firms, to the extent possible, other labor relations policies should be distinct and different as well.

(8) Interrelation of Work – It is critical that the firms not bid on the same jobs. In addition, the firms should not subcontract work to one another, nor should they refer work to one another.

(9) Top Management – While top management of the firms may be identical, and while the Boards of Directors may overlap, day-to-day control of the operations of each firm, particularly the day-to-day operations of the labor relations of each firm, should be separate and distinct, and handled by different individuals. The individuals who handle management of each firm should not be employed by the other firm.

Appendix C

GRAPHICAL REPRESENTATION OF DOUBLE-BREASTED OPERATIONS AND RESPONSIBILITIES/DANGERS IN SPECIFIC SITUATIONS

