

Casualising construction: why it's happening and how it can be stopped

rs21 industrial bulletin 9/4/14: by Brian Parkin

>> NG Bailey is and was vulnerable to strikes

Cast your minds back to March 2012. After months of unofficial strikes and protests by electricians and their supporters, the eight largest players in the Electrical Contractors Association withdrew from the Besna offensive – their plan to scrap the JIB national agreement that covers electrical workers and replace it one that delivered a 35% pay cut.

The sheer speed at which the Big 8 backed off came as a surprise to those of us on the ground. That is because the reason for the retreat was not entirely down to the militancy of the rank and file led campaign.

The decisive signal for the back-off was sounded by Balfour Beatty, the biggest of the construction companies. But it was not the first to wobble. The mostly privately owned NG Bailey had been rumoured as early as January 2012 to be getting cold feet about Besna. Why? And why, today, a good two years on, does NG Bailey again find itself caught in an industrial confrontation that could prove even more decisive?

Two reasons. First: construction companies operate on incredibly narrow margins – typically 3%. They are largely “end of project” players, engaged in the later stages of mechanical and electrical installation. They have to operate against threats of potentially crippling penalty clauses. Few can afford indemnity against these costs. For NG Bailey this meant a lack of reserve funds, limited equity plus the very real prospect of losing their repair and maintenance (R&M) contract with that other great Yorkshire family firm, Morrisons supermarkets.

Second: the changing landscape for the UK construction industry. The era of large public financed projects is over. The speculative commercial property boom (mainly in the south of England) is also closing. The big electrical and mechanical engineering companies have suddenly found themselves in a hostile and unfamiliar environment: a battlefield even.

>> Construction since Besna: “ethical scrutiny”

Since BESNA things have got worse. The impact of recession has worsened. The only prospects of large infrastructure projects lie in a possible power generation boom or through the planning nightmare of HS2.

The industry as a whole recognises that within six years the shape its business will be different. Only half will be “new build” and the rest will be “improvement, repair, maintenance” (IR&M).

This consensus sees the growth of IR&M as a decisive and irreversible trend in construction. It will encourage growing portfolios of smaller contracts. Consortia of local authorities will be the decisive players.

This trend towards public procurement dependency opens construction to **ethical procurement scrutiny** from local authorities, the bigger of which are still Labour controlled.

This is hastening the already pronounced trend for bigger construction companies to shed direct labour from their books. They want any employment irregularities to be at arm's length and not their own responsibility.

>> The latest strike wave: 5 Things

This is what is driving the relentless casualisation and deregulation in the construction labour market. And that is at the heart of current strikes. The demands of the strikers are simple:

- direct employment
- full incorporation into PAYE tax arrangements
- full National Health Insurance cover with employer contributions
- holiday pay
- a qualification period for transfer to permanent “on the books” employment

But why has this issue now turned into a crisis? Step forward the chancellor George Osborne. He assured he would close a tax loophole (not for the super rich but for low income earners). He did not realise that combined effect of his changes was to accidentally scupper a tax avoidance racket involving Tory donors in construction using subcontractors to pass off their workforce as self-employed.

>> CIS and payroll companies

Unite and other construction unions have long lobbied against the Construction Industry Scheme (CIS). Almost uniquely in the EU it allows employers to designate employees as outside the PAYE scheme. This renders them “self-employed” and thus off the company's payroll.

This practice gives rise to predatory **payroll companies** with around 770,000 “employees” on their books in construction (38% of the 2,040,000 UK construction workforce last year). Over 30,000 construction workers were transferred onto the CIS between 2010 and 2012, according to Unite estimates. The construction workforce fell by 48,000 in that period.

Here's how payroll companies work on big contracts. The main construction contract will be won through a competitive bid to do a certain portion of work on the site. That contract will be divided up into separate jobs according to the required trade speciality: electrical, civil, mechanical etc.

The main contractor will have bid in on the basis of estimates from specialist subcontractors. The bids assume work will be carried out by suitably qualified and experienced workers. But in reality every company wants as few direct (let alone permanent) staff on the books as possible. Enter the employment agencies and CIS.

The payroll company simply follows the trade journals, identifying big projects and looking for contract bidders. They approach with an offer for x workers for y hours for z pay. The main contractor factors this estimated labour cost into its final estimate. If awarded the contract, it engages the payroll company for a supply of suitable labour.

Now the payroll company has access to a large pool of unemployed or insecure labour. It allocates workers to the contract engaged as “self employed” as far as statutory deductions are concerned. The workers have to “agree” to pay a deduction before they get their weekly pay cheque. That cheque is typically irredeemable for at least three clear days, and not paid directly into the worker’s bank account. Tax is deducted is on a “flat rate” not than PAYE. Workers inevitably find themselves in tax arrears or with insufficient NHI credit.

Those workers with a record of trade union activity, or an outstanding compensation claim against an employer, have little chance of getting into even this most tenuous of employment. It’s a blacklisters’ charter.

>> “You can starve under my umbrella...”

New tax laws effective from 4 April have significantly changed the above system. Payroll companies have come out of the shadows to win official designation as “intermediaries” or more “employment umbrella companies”. These **umbrella** companies are legally required to make basic deductions for tax and National Insurance contributions. Legally they are employers and legally they have to pay the employer’s share of NI.

But the payroll turned umbrella companies have found ways round the law. They deduct 13.8% from workers’ weekly wages rather than pay their NI share of NI. They don’t provide statutory holiday pay, instead deducting 12.07% for a “holiday fund”. They make further deductions for administration fees and employer’s liability insurance.

What does this add up to? Thousands of construction workers previously on payroll employment have found that since 4 April they are leaving the site on payday £100 lighter.

>> Break Bailey: target strikes against the rip-off

There have been lightning walkouts at a number of sites within a single payday of the new scheme coming in. These have involved projects operated by at least two of the original Besna eight.

NG Bailey prides itself in being one of Yorkshire’s two most famous family firms. It was the first to wobble over Besna and is still exposed to “a high degree of operating risk” stemming from its modest equity base. Last year’s operating margins were down to 0.9%. The company failed on its

financial year profit target, racking up losses of £5m and £6.1m on two projects. Pre tax profits were down to £1.0m against a forecast £4.4m.

NG Bailey shed 500 employees from its overall 2,500 payroll last year. It is classified as an “active” company with “private limited with share capital” status. As such it has no obligation to publish specific employment data: “Only large full filing companies are required to file employment figures.”

As well as limited equity the company has low cash compared to its realised profits. With massive losses (£11.1m) from two recent contracts, NG Bailey is not in a position to withstand a protracted showdown in a dispute over a subcontract labour racket that it cannot easily get out of.

We should seriously consider a “Break Bailey” approach from the start of this new dispute. “Leverage negative publicity” would be a quick and easy. Morrisons supermarkets are an obvious target. But construction site leafleting will be the key to spreading the strikes.

>> Appendix: Company check on NG Bailey

cash reserves	£674,000
net worth	£42.68m
assets	£138.2m
liabilities	£97.21m
sales 2012	£464m
sales 2013	£422m

Registered head office: Denton Hall, Ilkley, Leeds LS29 0HH

Recently completed contracts: King's Cross, Birmingham New Street, Reading station, Arla Foods dairy in Wiltshire. BBC media city in Salford.

New and current contracts: Birmingham City University (Institute of Art and Design) with additional three year maintenance contract; Huddersfield Leisure Centre, £5m contract share with BAM; Aberdeen International Business Park, £15m contract share with Bowmer & Kirkland; Durham Freemans Reach centre, £2.4m contract share; Lancashire NHS Foundation Trust inpatient unit in Blackpool, £9.9m contract share; Ministry of Defence Beacon Barracks in Staffordshire, £25m total contract shared with Lend Lease (Bovis).

Repair & Maintenance contracts: Arla Foods, Aylesbury; 125 Old Broad Street, London; Morrisons supermarkets (420 sites); Trinity Court centre, Leeds.

NG Bailey is also in partnership with Lend Lease (Bovis) and Vinci to promote joint venture companies for local authorities infrastructure and R&M. They will be dependent on procurement policies of mostly Labour controlled councils.

For the past seven years NG Bailey has worked closely with Meridian Business Support to recruit skilled staff for projects. Meridian calls itself "an employment subcontractor hiring 5,500 temporary staff on weekly pay and with over 30,000 staff for immediate contact for short notice, short term subcontract employment".

John Anderson, Bailey's director of employment and human relations, gives a moving testimonial to Meridian in a DVD message. Subcontracting labour through Meridian has "been the key to cutting costs". Bailey also uses Reed Employment regularly. A visit to Meridian's current construction jobs website shows vacancies for plumbers, pipefitters, electricians and air conditioning engineers – all at below JIB agreement rates and for a duration of no more than 12 weeks.