



# Statement for the Record for Associated Builders and Contractors

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*Testimony of*  
F. Chet Karnas

*Before the*  
House Education and the Workforce Committee  
Subcommittee on Health, Employment, Labor, and Pensions

*On*  
“Corporate Campaigns and the NLRB:  
The Impact of Union Pressure on Job Creation”

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May 26, 2011

**The Voice of the Merit Shop®**

Chairman Roe, Ranking Member Andrews and members of the Subcommittee on Health, Employment, Labor, and Pensions:

Good morning and thank you for the opportunity to testify before you today on “Corporate Campaigns, the NLRB and the Impact of Union Pressure on Job Creation.”

My name is Chet Karnas. I am the president and owner of Lone Sun Builders, Inc., a small framing and drywall subcontractor based in Albuquerque, New Mexico. Lone Sun provides hands-on project management, qualified supervision, timely and cost-efficient scheduling, and a certified safety program. Our mission is, and always has been, to provide quality with integrity through ethical business practices. Lone Sun’s reputation is reinforced by our loyalty to and respect for our clients, vendors and, most importantly, our 55 employees.

I also appear before you today on behalf of Associated Builders and Contractors (ABC). ABC is a national trade association representing more than 23,000 merit shop contractors that employ nearly two million workers whose training and experience span all of the 20-plus skilled trades that comprise the construction industry. ABC’s membership is bound by a shared commitment to the *merit shop philosophy*. This philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through competitive bidding based on safety, quality and value.

### **Lone Sun Builders’ Battle with Corporate Campaigns and Bannerling**

Lone Sun Builders has simple roots, starting as a “two guys and a pick-up truck” operation. As we have grown to add more employees, we have chosen to operate our business like an extended family in which workers are taken care of and treated fairly. Today, Lone Sun has grown to be one of the most highly regarded subcontractors in the state, and a proud merit shop contractor.

However, because Lone Sun sets the bar high among subcontractors, we have been repeatedly targeted by unions attempting to organize our employees. Unions have

launched several “corporate campaigns” against us over the years, during which they have engaged in many unethical practices, including attempts to smear our name through “bannering.” In Lone Sun’s experience, bannering has consisted of the union displaying large signs in front of our clients’ (and other neutral third parties’) places of business. These signs were emblazoned with inflammatory, unfounded claims about our labor policies, and designed to publicly humiliate and discredit us. These deplorable tactics are desperate attempts to unfairly gain market share by targeting merit shop construction companies and their clients—regardless of the wishes of their employees. In the construction industry, unions use bannering to threaten or coerce merit shop contractors’ clients into hiring union-affiliated firms, or to force merit shop contractors to sign neutrality agreements or become union signatories. If these objectives fail—and they often do—they use bannering to try to put merit shop competition out of business for good.

### ***More Amicable Times***

Lone Sun’s experience with aggressive union bannering began almost four years ago, but it is important to note that we have had interactions with various divisions of the United Brotherhood of Carpenters for more than two decades. Initially, the relationship was professional and respectful, and involved the New Mexico District Council of Carpenters. From time to time, a local organizer would come out to Lone Sun jobsites to look around and ask employees why they were working for a merit shop company. After these visits, we would sometimes have discussions over coffee, where I would provide him with information about Lone Sun’s wage structure and benefits program, as well as the community service we performed. In retrospect, I believe the non-threatening nature of our initial relationship with the carpenters was largely due to the fact that we lived and worked in the same community. We felt a connection through our mutual goal of positive future development in the area.

After a few years, however, the situation started to change. My local union contact informed me that the District Council had decided to bring in organizers from other parts of the country—specifically Chicago and El Paso, Texas. I firmly believe the union felt it could more effectively execute aggressive organizing efforts and corporate campaigns

if it utilized organizers that had not lived and worked in our community.

### ***Shift to Aggressive Tactics***

Around 2004, when the District Council was folded into the Mountain West Regional Council of Carpenters, they began sending letters to Lone Sun's current and prospective clients stating the union had a "labor dispute" with us, wrongly claiming we "did not provide benefits" to our employees when we actually did (and still do). In fact, Lone Sun offers an excellent benefits program that includes health and life insurance, a public works pension plan and even a 401(k)—a rarity for our industry's tradesmen and laborers.<sup>1</sup> As a continued commitment to our employees, we have steadily increased the amount we pay toward their health care premiums—currently 85 percent—and we cover 100 percent of the premiums for our employees' life insurance. In addition, we offer trade-specific certifications, first aid training, Occupational Safety and Health Administration (OSHA) training and an apprenticeship program.

We responded to each of the union's letters with one of our own, countering the claims and providing an overview of Lone Sun's benefits program. In a preemptive move, we also provided letters and documentation to the New Mexico Department of Workforce Solutions, the governor of New Mexico, the lieutenant governor, state legislators, the president of the University of New Mexico, as well as developers, general contractors, owners, and trade and professional associations.

At the same time, the new union organizers began to show up at jobsites claiming to be holding "raffles" in which employees were to submit their names, addresses and telephone numbers in order to win. Although none of the employees who signed up for the raffles ever won anything, most said they were contacted by the union. Some employees were even personally visited at their homes.

In May 2006, the union organizers contacted us and we agreed to a meeting at our office.

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<sup>1</sup> Incidentally, Lone Sun's peers in the industry that are union signatories have stated that their benefits programs have become less solvent, with retirees being paid less as employer contributions are rising. In the area controlled today by the Southwest Regional Council of Carpenters, these contributions are scheduled to rise another .50 cents per hour by the end of 2011.

During the meeting, I mentioned their letter campaign and the raffles, and I once again reminded them about our benefits program, as well as our respect for union tradesmen and contractors. I discussed my friendships with other principal owners of union signatory contractors, and our commitment to the industry as a whole and our community at large. I told them I believed we should concentrate our efforts into making things better for everyone. At the end of the meeting, they remarked that they did not care for Lone Sun Builders, and would continue to harass me and my employees.

The following year, the carpenters again reorganized into another larger regional council—this time referred to as the Southwest Regional Council of Carpenters. This group consolidated what originally was a small group of locals, with approximately 2,500 members, into a massive council in excess of 32,000 members. This allowed the carpenters to export their corporate campaign and bannering tactics from California, through Arizona and into New Mexico. Throughout the next two years, the carpenters sent letters to owners, contractors and developers stating they were engaged in a “labor dispute” with Lone Sun, and that they would be pursuing an “aggressive public information campaign” against us that would “unfortunately impact all parties associated with projects where they are employed.”

In 2008, the aggressive bannering started in earnest. The carpenters recruited day laborers to hold large signs, stating, “SHAME ON” the third party owners of businesses where Lone Sun performed work. On some projects, the entities named on the banners had not even hired us, or even the general contractor. In many cases, the owner or developer hired the contractors, and the end user—the tenant—was named on the banner. In all, Lone Sun was targeted with banners on approximately a dozen projects in 2008.

In June 2009, the union organized a mass picket at a high-visibility project in Santa Fe, New Mexico. The mass picket included vulgar chants, physical threats, name calling and false statements, including that Lone Sun paid employees in cash and did not provide health benefits. After the mass picket in Santa Fe, the carpenters duplicated the process at multiple sites, including a furniture outlet, a church and the University of New Mexico’s Tamarind Institute. At this point, we knew we could not sit idly by and allow

the unions to pressure us and our clients any longer.

### ***Fighting Back Legally and Ethically***

Over the years our preferred response to the carpenters' actions had been direct dialogue with their representatives—always accompanied by explicit statements that the conversations were not to be construed as bargaining discussions. However, once the union became extremely aggressive, this method of communication failed. We attempted to contact the Southwest Regional Council's headquarters in Los Angeles multiple times, but they never responded. When members of the public and state legislators were similarly unsuccessful, we learned that it had become the union's procedure to not respond to inquiries into the motivations behind their actions. From time to time, they would promise to make a statement, but never did.

In 2009, we embarked on a campaign to protect our company's integrity, and to educate as many professional organizations as possible in and around Albuquerque about the true motivation behind the carpenters' actions. We gave presentations to many local trade associations, employer groups, schools and press outlets, resulting in task forces, awareness materials and positive media coverage.

We visited many of the carpenters' bannered sites around the area—regardless of whether Lone Sun was the target—and learned that the day laborers were not even union members. Instead, the carpenters used day laborers and paid them low wages, with no deductions or benefits. We, of course, found it ironic that these individuals had chosen to discredit a company with loyal employees who enjoy excellent pay and benefits.

In 2009, we launched our blog, which chronicles Lone Sun's experience with the carpenters' corporate campaign. We also created our own banners, which read, "LONE SUN BUILDERS – EMPLOYEE BENEFITS AND GREAT WAGES," and "SHAME ON THE CARPENTERS UNION – HONESTY AND INTEGRITY ARE THE AMERICAN WAY – STOP THE LIES!" We produced a brochure that provided photos of the union's banners at local hospitals and pharmacies, churches and schools, appealing to government officials and the business community to take action. We held a "silent"

demonstration and community breakfast for friends and colleagues (and even welcomed the union picketers) at a local church where the carpenters had disrupted a service.

I firmly believe our actions positively impacted public opinion in New Mexico and helped Lone Sun Builders avoid complete financial and professional ruin.

### *Aftermath*

Despite the outpouring of support we received from our community, and the successes of our own public education campaign, business has suffered greatly. Many of the clients and building tenants that were publically named on the union's banners also were impacted by the negative publicity. In addition, just as the carpenters intended, our general contractors became reluctant to utilize our services for fear of the negative publicity and the organizers' aggressive and vulgar presence. In all, we estimate that we have suffered a 20 percent to 30 percent decline in sales directly due to the negative impact of the carpenters' corporate campaign. To date, prospective clients express concerns about working with us—and in many instances they have opted to go elsewhere for services.

Even though business has been negatively impacted, we continue to promote our company and its skilled workforce, display our banners touting our benefits program, and contribute charitably to our surrounding community. In addition, Lone Sun's experience with union corporate campaigns is extensive and we have become knowledgeable in their tactics—and how to lawfully combat them.

The last few years have taught Lone Sun that as long as we remain defiant and our employees express their unwillingness to organize, the union will continue to do anything it can to destroy our company and its reputation. The carpenters union has violated our property rights, issued false claims, made vulgar and threatening remarks, and vowed to put us out of business. To my disappointment, the National Labor Relations Board (NLRB) has recently signaled it will give them cover every step of the way.

## **The NLRB's Support of Corporate Campaigns and the Impact on Job Creation**

The NLRB's recent actions clearly demonstrate the agency has abandoned its role as a neutral enforcer and arbiter of labor law in order to promote the special interests of politically powerful unions. These actions have negative implications for workers, consumers, businesses and the economy, and will inevitably invite greater union intimidation of employees, consumers and small businesses; trample private property rights; reduce employee access to secret ballots; and greatly limit the ability of U.S. businesses to quickly and flexibly adjust to the demands of global competition and a changing economy.

The Board's September 2010 bannered decisions have been most disappointing for Lone Sun. In these cases, the Board took steps to protect this coercive practice, failing to apply longstanding laws against secondary union activity intended to prohibit confrontational conduct aimed at neutral parties, such as our clients.<sup>2</sup> For decades, the ranks of construction unions have been dwindling, which is reflected in the fact that today, only 13 percent of construction workers belong to a union.<sup>3</sup> This statistic, which illustrates a clear industry-wide choice *not* to organize, and leads unions to employ bannered and other desperate, unethical tactics. The NLRB's decision will no doubt embolden and encourage more unions to incorporate this practice into their already aggressive and irresponsible corporate campaign efforts.

The Board also has made it easier for construction unions to engage in so-called "salting" abuse, in which they apply for work with merit shop contractors without being genuinely interested in performing that work, solely to provoke unfair labor practice charges and disrupt merit shop workforces.<sup>4</sup> Endorsing the hiring of individuals whose motivation for seeking employment is the disruption of the workplace runs directly contrary to the Obama administration's efforts to grow our economy and improve working conditions

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<sup>2</sup> In consolidated cases known as *United Brotherhood of Carpenters Local No. 1506* [355 NLRB No. 159 (2010)], the Board determined in a 3-2 split decision that bannered is protected speech under federal labor law. In his dissent, Board Member Brian Hayes argued that bannered was nothing more than "stationary picketing," and should be considered "secondary coercion," as originally intended by Congress in Section 8(b)(4)(ii) of the National Labor Relations Act.

<sup>3</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Economic News Release: Union Members Summary*, Jan. 21, 2011; available at: <http://www.bls.gov/news.release/union2.nr0.htm>.

<sup>4</sup> See *KenMor Electric Co.*; 355 NLRB No. 173 (2010).



for the American people.

I understand the Board also is looking at whether employers can be forced to allow non-employee union agents to trespass on their premises for the purpose of harming their businesses if the employer has allowed access to other non-employee individuals or groups that have no intention of harming the business (such as the United Way or the Girl Scouts).<sup>5</sup> This decision will have an enormous impact on employers' ability to shield customers, clients and employees from interference and harassment by union agents.

In yet another recent case, the NLRB determined that threats of violence made by pro-union employees were acceptable because those threats did not meet the Board's vague, undefined standard of creating a "general atmosphere of fear and reprisal."<sup>6</sup> Lone Sun's policy is to not tolerate *any* threats of violence among our employees. It is disturbing that the Board does not share my view.

Regrettably, the NLRB's actions have been wholly consistent with the agenda set by the Obama administration, which has regularly put the interests of its union supporters ahead of fiscal responsibility and job growth. Through interpretations, regulations and executive orders, the administration has repealed union transparency requirements and consistently promoted union-backed policies, including flawed wage mandates under the Davis-Bacon Act and discriminatory project labor agreements (PLAs) on federal construction projects. The administration's policies cost taxpayers billions of dollars, negatively impact business opportunities for small businesses and limit employment opportunities for workers. PLAs, for example, discriminate against the vast majority (87 percent) of the construction workforce that chooses not to join a union by denying them an opportunity to work on federal projects.

The NLRB remains the main offender, as far as Lone Sun is concerned. Just recently, the Board took unprecedented steps to mandate where and how a company can operate and expand its business. As I'm sure many of you would agree, the federal government has

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<sup>5</sup> See *Roundy's vs. Milwaukee Building and Construction Trades* (Case No. 30-CA-17185).

<sup>6</sup> See *Mastec Direct TV*; 356 NLRB No. 110 (2011).

no right to dictate where a company can or cannot create jobs or to prevent companies from speaking about costs related to union actions.

### **Conclusion**

The Obama administration and the NLRB continue to pursue a labor agenda that stifles job creation and economic growth. With a current unemployment rate of nearly 18 percent in our industry, there is simply no place for corporate campaigns' disruptive and destructive practices.<sup>7</sup> It is unfortunate that the Board has chosen to turn the clock back more than 60 years to a time when secondary boycotts threatened to paralyze the industry and stifle job growth. Regardless of the Board's behavior, ABC members like me will not be deterred from their dedication to the merit shop philosophy.

On behalf of Lone Sun Builders and ABC, I'd like to again thank the Education and the Workforce Committee for holding today's hearing. I am pleased to see the Committee take a renewed interest in the problems that corporate campaigns—bannering in particular—can cause for honest, responsible contractors, and I look forward to working with you on this issue. Mr. Chairman, this concludes my formal remarks. I am prepared to answer any questions you may have.

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<sup>7</sup> U.S. Department of Labor, Bureau of Labor Statistics, *Construction Sector at a Glance: Employment, Unemployment, Layoffs, and Openings, Hires, and Separations*, April 2010; available at: <http://www.bls.gov/iag/tgs/iag23.htm>.