

The Tulare Job

A Costly Labor Relations Problem A Disastrous Subcontract

Three exhausted men were sitting dejectedly in an untidy smoke-filled room. They were talked out. Piled papers and discarded coffee cups littered every surface. No, they were not picking candidates for political office. They were endeavoring to piece together the remnants of a construction subcontract that had gone seriously astray. They were striving to understand how such a promising contract had gone so sour. They couldn't believe the dismal figures they were reviewing. They had met early on a Saturday morning, talked all day, discussing the same old points over and over, and were now disheveled, disheartened, and exhausted.

The Power brothers, Michael and Tracy, were the owners of Power Electrical Corporation, a fairly successful electrical contracting firm with offices, shop, and yard in Santa Monica, California. They had built the business from scratch during 15 years of diligence and hard work. Seated with them was Ward Montgomery, their superintendent on the Tulare job, and a trusted key employee. Monty had been with the brothers for over 10 years and knew the ins and outs of Power Electrical as well as Mike and Tracy.

The project they were so earnestly dissecting was just completed and their figures showed an out of pocket loss, so far, of over \$45,000. There was no profit, no recovery of overhead, and they had actually spent over \$45,000 more than they could ever collect. They were in mortal shock. Although the work in the field was completed, except for minor pick-up and a one year warranty, they still had to face up to an arbitration, lawyer's fees, and a lot of lost time for Mike, Tracy, and Monty. And they could easily lose the arbitration. Their position wasn't that good. All of this for a year's work on a contract of over half a million dollars and an expected profit of nearly \$75,000.

How could this have happened? The explanation starts with events set in train over a year ago. There are a lot of details, but I'll try to be brief.

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Michael Power made all the decisions about which jobs to bid. It was early in March, 1986. He was sifting through the Commerce Business Daily looking for interesting work to bid and spotted a possible live one. It was a State of California job with an architect's estimate of \$12,275,000. One of the listed general contract bidders was their old friend, Mammoth Construction Company in Northridge. Through the years they had done a lot of work with Mammoth and were on good friendly terms with Graham Elliott, Mammoth's president. A phone call to Graham got Mike the promise of the drawings and specifications for two days, enough to take off the job so they could prepare a bid.

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When he met his brother in the coffee room an hour later, Mike said, "Tracy, we're going to bid the Juvenile Rehabilitation Center in Tulare County for the State of California. Mammoth is one of the generals. We'll have the plans and specs next Wednesday and Thursday. We can have our bid prepared by the following week."

Tracy looked questioningly at Mike over the rim of his coffee cup, "Isn't Tulare a little out of the way for us?"

"Well, it is a little far but we need the work and I think we can cope with it. We'll have to do a little research on the labor situation up there, but there should be enough money in it to make it worth our while."

"It won't hurt us to look at the plans and specs anyway. Do whatever you think is right, Mike." Tracy trusted Mike to make the right decision. So far he had led the company into a most profitable electrical contracting business.

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Mike Power had the plans and specs picked up at Mammoth Construction and had agreed to return them before nine o'clock Friday morning. That gave them two full days to make their take off.

Upon delving into the documents, Mike found that the project was a Juvenile Rehabilitation Center in Tulare County, about 25 miles from Sequoia National Park and about 160 miles from home base in Santa Monica. The project consisted of several buildings, all one story. There were 24 barracks style dwelling buildings of 3000 square feet each, a recreational-educational building of 6000 square feet, a workshops building of 9000 square feet, and an administrative unit consisting of kitchen, dining hall, infirmary, and offices of 12,000 square feet, a total of 99,000 square feet.

All of the buildings were to be of UBC Type V, frame and stucco construction, with gypsum wallboard interiors. The electrical portion was simple and, in addition to the buildings, included some grounds lighting and on-site underground electrical distribution inter-connecting the 27 buildings.

It didn't take long to make the take off as the residential portion consisted of 24 identical buildings. All that was left was to price it out, estimate the labor, and add in the overhead and profit. The plans and specs were returned to Mammoth on time as promised.

Mike discussed the labor problem with Tracy and Monty. The electrical union surcharges for out of town travel and subsistence made it impractical to use their regular Los Angeles electricians. So, they'd send Monty up to Tulare to run the job. He'd stay in a motel in Weed Creek, a woebegone settlement about eight miles from the jobsite. He'd obtain as many electricians as he'd need from the union hiring hall in Fresno, about 70 miles from the site. Mike had already phoned the secretary of the local electrical union, George Black, and obtained all the details. Their labor costs would be little different from local jobs.

Monty said, "That'll be great fun spending my evenings in Weed Creek. I'll bet the night life there is hilarious."

Mike said, "You won't have to worry about the night life there, Monty. You'll need your evenings for record keeping, phoning back here to let us know how the job is coming, ordering materials, planning the next day's work, and getting to bed early. Don't worry, you'll get a good cut of the profit to make it worth your while."

Tracy's parting shot as he dashed off to a jobsite meeting, "Well, Monty, don't worry too much about the night life. We haven't got the job yet!"

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artin Bradley, worked over the figures until they got them just right. High
...ough to get the job. That's the magic formula. Their Bid was \$561,401.
... and sealed the envelope. Martin delivered the bid to Mammoth
... on Wednesday morning, March 26. The general contractors' bids were
... the following day.

...ield of seven bidders at \$12,120,000. When Graham Elliott, Mammoth's
...ie was elated, "We've got the job! And you're the low electrical bidder so
...earing from us soon. We've got to get started on time if we're to avoid paying

...icked up at Mammoth Construction and re-checked all their bidding papers and couldn't find anything wrong so they
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...onal Park and about 160 miles from h...
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...ing a school district job in Yorba Linda and he'd be the right man for job
...achelor and wouldn't mind spending months away from home in the Weed Creek
... Los Angeles on weekends.

...on May 5, 1986 and, allowing 330 calendar days for construction, they would have to
...pletion by March 30, 1987. Not too hard to do according to the detailed CPM
...prepared by Mammoth's chief estimator, Rivers Owen. They had gone over it with
...s and suppliers and everyone agreed it was practical, reasonable, and attainable.

...ctrical work by setting up a portable job office and secure storage container. He made
...orge Black at the Fresno Electrical Union for four electricians and they started work
...derground electrical distribution system. Then, with a couple more electricians added,
...the underfloor conduits in each building. They were meshed in with Mammoth's
...y moved from building to building forming and pouring the foundations and floor slabs.
...ring one building every week. He was proceeding well on schedule. This was
...cy and cooperation at its best.

...for phased construction of the buildings, starting with Administration Building A, Shops
...ion Building C, and the Residential Buildings D1 through D24. As soon as the first
...n was completed, carpentry crews commenced, followed by plumbers and the other trades
...r. As soon as Building A was ready for above slab electrical work, Monty had started
...quisition for electricians from the Fresno union hall. He added even more electricians as the
...mentum.

Weed Creek. I'll bet the r...
Monty. You'll need your eve...
ordering materials, plannin...
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Monty, don't worry too m...

...ed to report to the head office in Santa Monica each evening that everything was progressing
...ith the schedule. They would easily finish within the time schedule and safely under budget.

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Monty and Mike were enthusiastic. Mike told Tracy, "Monty's on top of the job. We'll make a few bucks on this one!" Tracy shared his brother's enthusiasm.

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The crew of electricians was up to 22 now and the men appeared to work harmoniously. Many of them knew each other as they had worked together on previous jobs in the Fresno area. One of them, Amos Benton, seemed to be a natural leader and the others paid attention to what he said since he sounded so authoritative. He gave some of them tips on how to read the plans and how to do their work more efficiently. He knew everything there was to know about the electrical trade.

When they got to the conduits for feeding the ceiling lighting fixtures in Building A, Monty started a crew of two in installing 2-inch by 6-inch wood blocks between the ceiling joists. According to Section 16.57 of the Electrical Specification, the fluorescent lighting fixtures were to be installed after completion of the ceiling by screwing through the gypsumboard into the wood blocking. There were to be two blocks per fixture. He set up a portable work place for measuring the blocks, cutting them with an electric skillsaw, and carrying them into the building to be nailed into place at previously measured and marked locations. The wood blocking operation was efficiently under way for about three hours when the electricians stopped as usual for lunch.

The electricians usually gathered to eat their lunches in the shade of the Power Corporation office and storage container. As usual, most of them were raptly listening to Amos Benton expounding authoritatively on some arcane subject in which he had extraordinary in-depth knowledge. After the subject began to pall and he sensed the defection of his audience, he zeroed in on the wood blocking crew. With elaborate disdain and his usual air of authority, he smirked, "Boy, you guys are some great macho electricians. Doing carpentry work. Carpenters should be doing that kind of work. Not electricians. You'll never catch me doing carpentry work. I'm too valuable as a highly trained and skilled electrician! You chumps are pathetic!"

Crestfallen, the wood blocking crew went back to work, measuring, cutting, carrying, and nailing. Around mid-afternoon, Monty checked with them and found them dissatisfied with their assignment. They recounted Amos' lunchtime comments and Jack Russell, the disgruntled blocking crew leader, said, "Monty, isn't this carpentry work? Why are we doing it? We're electricians! Highly trained and skilled!" Monty patiently explained, "Look, you guys, this blocking is in the Electrical Specification, Section 16.57. Power Electric's bid includes everything in the Electrical Specification. So, we have to do it. Y'understand?" They went back to work.

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The next day at the electricians' lunch, Amos Benton was back on the subject of electricians doing carpentry work. "It isn't right. Electricians should do only electrical work."

Jack Russell countered, "Yesterday, Monty told us that the blocking is specified under electrical work and we've got to do it because Power's contract includes everything in the electrical section. There's nothing we can do about it."

The charismatic Amos persisted, "Oh, yes, there is! We can refuse to do the blocking and refuse to work in any building where electricians have installed any blocking. That blocking's tainted. It should be removed and be reinstalled by carpenters."

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They all looked up in disbelief as Amos' amazing theory unfolded. Nevertheless, it started them thinking about it.

The next day at lunch, the authoritative Amos declared that electricians doing carpentry work was against union rules. "We should walk off the job right now. Then Monty will come to his senses and get some carpenters. It won't take long!"

Jack Russell protested, "Look, Amos, I need this job. I've got bills. I don't mind doing a little blocking work."

Most of the others sided with Jack but Amos persisted, "If we let them break this rule none of our rules will mean anything! I say we should teach them a lesson. Then they'll respect us. Let's start now!"

A few agreed with Amos and they started working on the others. Finally they bullied the rest into supporting a united attack on Monty.

When lunch time was over, Monty noticed that the electricians were still sitting there with no move back to the job. He approached the group, "Time to go back to work, men. No time to waste. We're on a tight schedule and can't afford to fall behind!"

Amos said, "We're staying right here until you call off the carpentry work. It's against union rules. We're electricians you know!"

Monty replied, "We've got to do the blocking. It's in our contract!"

"Well, we're not going to do it. Go and get some carpenters!" Amos retorted. No one moved.

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Monty then left and returned to his office. He telephoned Mike Power to inform him of this unexpected glitch and to get his advice. Mike suggested calling George Black.

Monty dialed the Fresno Electricians Union and got George on the line, "George, your guys won't work. They're just sitting here. They object to nailing in blocking to support lighting fixtures. They say it's against union rules." George said, "I'll be right out. I'll be there in less than two hours!"

Then Monty went to Mammoth's site office to talk to Jerry Shore. After bringing Jerry up to speed on the whole situation, Monty finished with, "Jerry, can't you get your carpenters to do this blocking? We'll pay you for it."

"No, Monty, it's in your contract. I've no carpenters to spare. You've got to do it. And you better do it now. We don't have any extra time for screwing around arguing about nonessentials. You go back and tell those asinine electricians of yours to get off their dead butts and go back to work!" Jerry was clearly unsympathetic. Monty left without replying. He was getting worried. He'd expected some help from Jerry. He went back to his office to wait for George.

When the union secretary arrived, it was a little after three o'clock. Monty met him at the site gate and quickly told him what had transpired. George said, "Let me talk to them by myself." He walked across the

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site to where his members were still sitting around arguing among themselves. They looked up expectantly when he showed up. He exploded, "What the hell do you guys think you're doing?"

Amos, the self-appointed spokesman, calmly and deliberately replied, "We're union electricians. We don't have to do carpentry work. It's against the rules. They should get carpenters!"

George said, "You're right about the rules, but this is no way to go about it. You guys go back to work and I'll take care of this the proper way! We've got to negotiate."

Amos, the weight of leadership going to his head, said, "No way! We'll go back to work when the wood blocking is settled. Then they'll respect us!" The oracle had spoken. They all sat where they were. Nobody moved. George stalked off to find Monty. They discussed it together for a while and then went to Mammoth's office.

Jerry looked up, exasperated, "What is it now, Monty?"

Monty said, "This is George Black with the electricians' union in Fresno. George, this is Jerry Shore, Mammoth's Job Superintendent."

George, trying to sound authoritative but reasonable, explained, "Jerry, our rules don't allow electricians to do carpentry work. We have an understanding with the carpentry union. We don't do their work and they don't do ours."

Jerry said, "The State's specifications put the blocking in the electrical section and that's the way we let the subcontracts. I don't hear any carpenters complaining about your doing their work. This is a two bit phony dispute. It's an illegal work stoppage. Why don't you get your guys back to work so we can finish this job?" George, starting to see the impossibility of changing Jerry's mind, hardened his position, "It's a matter of principle. We gotta uphold the rules. Our electricians won't do any more blocking. In fact, we won't work in any building where electrician-installed blocking has been installed. It must be removed and reinstalled by carpenters." He started out of the office, followed by a bewildered Monty. Monty looked back over his shoulder to catch Jerry's cynical eye.

George and Monty went back to talk to the electricians. George explained their current position to his members. Amos crowed smugly, "See, I told you guys!"

Monty said, "If you're not going to work you might as well go home. We're not paying you to sit here."

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So, no electrical work at all was done for about a week and a half. Meanwhile, higher union officials from both involved trades were discussing the matter and decided to submit the problem to the Joint Conference Board in Washington, D.C. This is a body consisting of representation from all of the national and international unions. They meet periodically to settle issues of jurisdiction between the various unions. Their protocol was that there should not be strike action. The work should proceed on the job by the trade assigned by the general contractor pending the Board's final ruling.

The managers of Mammoth Construction decided that the work should be completed by Power Corporation as it was already in their contract and the contract had been let in accordance with the State specifications.

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So Monty's wood blocking crew resumed work and the electricians went ahead with installation of conduit and boxes. However, Amos kept the pot boiling by telling his associates that they were right and would win the argument in the long run. Amos and a few of his supporters constantly ridiculed anyone who appeared to be working with any speed or relish. Some of the electricians refused to work in areas where wood blocking was being done and they were steadily falling behind schedule. The initial momentum of early weeks on the job was completely lost. Production was perilously falling off and the electrical work was seriously out of synchronization with Mammoth's general construction schedule.

The State construction inspectors and administrators were continuing to apply pressure on Jerry Shore and he, in turn, had repeatedly warned Monty about keeping up to schedule. Finally, Mammoth's home office served written notice on Power Corporation that they would be held financially responsible for all costs of the electrical slow-down as well as liquidated damages.

Jerry Shore was seriously concerned about his overall schedule and shuddered to contemplate what would happen to him if Mammoth had to pay \$2000 a day liquidated damages. He called Monty to his site office repeatedly to discuss the problem. It was time to start drywall work in several buildings where the electrical rough-in was not yet completed. In fact, in some buildings it wasn't even started. After several days of holding off the drywall contractor, Jerry notified Power Corporation, and Monty personally, that they would proceed in scheduled order on each building whether the electrical was in or not.

Monty did his best to get his electricians motivated and keep the job moving. But Amos always undid everything Monty accomplished with a few pointed smart aleck remarks when Monty left the scene. Monty tried to get Amos and some of the other die hard militants off the job but George Black insisted that union hall hiring is by seniority, not by discrimination or favoritism. He said he would talk to Amos and his followers but it did no good. George acted like he was afraid of Amos. After all, his job depended on maintaining the good will of the members.

Jerry kept his promise and went ahead with installation of the gypsum wallboard walls and ceilings, starting with Building A. The drywall crews were specialized, so the men who hung the board continued on to the next building while joint tapers would then take over. The texturers and finishers would follow on. The wallboard hangers were already up to Building C, while the tapers were in B and the texturers and finishers were starting in A. With several skilled crews they were moving right along.

Meanwhile, the electricians were concentrating their efforts on the last buildings, D15 to D24, as they were not yet tainted by electrician-installed blocking.

As the electricians ran out of work to do in the last of the D buildings, they started working closer to the wallboard hangers and finally caught up. From then on, wherever they encountered gypsum wallboard already in place, they would have to break holes in the wallboard to install their conduits and boxes. This slowed them down even more and the drywall contractor was constantly complaining about the damage. Jerry Shore told them to keep track of all repair costs as they would be backcharged to Power Corporation.

The job became a nightmare for Jerry Shore and the Mammoth Construction people and it was no better for Monty and the Power brothers.

The original general contract completion date of March 30, 1987 had been extended to April 21, 1987 by approved change orders. Power Corporation finally completed their wiring and the drywall patching was completed on May 15. The other follow-on subcontractors still had at least 45 more days of work.

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The date of substantial completion was July 10, 1987. Eighty days late!

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Eventually, the decision was handed down by the Joint Conference Board. By then the disputed work had been long completed. It was finally decided that the blocking work should have been done by carpenters. The Board confirmed, however, that the general contractor was entirely justified in making the work assignment in accordance with the State specification's allocation of the work. The Board's decision would apply to all future cases.

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A few days after Monty had closed down the Tulare operation and was back in the Santa Monica office, Power Corporation received an AAA Arbitration Demand from Mammoth Corporation.

They were asking for:

Liquidated Damages, 80 days @ \$2000 per day	\$160,000
Backcharges from the Drywall and Painting contractor for patching and repairing gypsum wallboard walls and ceilings	\$30,500
Extended supervision and overhead, 80 days @ \$1145 per day	\$91,600
Total.....	\$282,100

Plus attorney's fees, interest, and costs.

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Mike Power had discussed Mammoth's arbitration claim with Glenn Landis, Power Corporation's attorney, who then immediately filed a counter-claim with the Los Angeles Office of the American Arbitration Association. Power Electrical Corporation's counter-claim asked for:

Additional electrical labor made necessary by Mammoth's ordering the gypsum wallboard walls and ceilings installed out of normal and expected scheduled sequence	\$181,900
Extended supervision and overhead, 80 days @ \$550 per day.....	\$44,000
Total.....	\$225,900

And denial of all of Mammoth's claims. Plus attorney's fees, interest, and costs.

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Which brings us up to the all day Saturday marathon discussion at Power Electrical Corporation.

Mike finally rose from his chair and said to Monty and Tracy, "This isn't the end of the world, men. We'll live through it somehow. This is the contracting business. Let's go home and rest up over what's left of the weekend and come back here Monday to sort this out. We'll leave it in the capable hands of Glenn Landis and concentrate all our efforts on finding more work and keeping this ship afloat."

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