

The Growing Threat of Rogue Unions to the AFL-CIO

by Niev Duffy

The recent expansion of the controversial union United Service Workers of America (USWA) poses a serious threat to many New York unions and raises critical policy questions for the AFL-CIO. Critics accuse the USWA and its president, Steve Elliott, of extensive raiding activities and of lowering area standards by offering employers "sweetheart deals" and substandard contracts. Rising concerns over these activities led the New York State AFL-CIO to condemn USWA in a May 2000 resolution and to call on John Sweeney, the national AFL-CIO's President, to repeal its membership. Two months later, a resolution passed by the AFL-CIO Building Trades, the division of the national organization that oversees unions in the construction trades, called on President Sweeney to sanction TCU, the current parent international, for its affiliate's behavior. The decision whether or not to expel the "rogue" union is a politically thorny one for Sweeney. In 1993 he warmly welcomed USWA into the Service Employees International Union (SEIU) during his tenure as president of that union. According to leaders of the AFL-CIO Building Trades, Sweeney has not yet taken decisive measures to discipline USWA.

While locals belonging to the Building Trades have always experienced competition from other unions, few, if any, could claim AFL-CIO membership. In 1993, USWA obtained its AFL-CIO membership by affiliating with the Service Employees International Union, SEIU, a move that was crucial in establishing its credibility with contractors and their employees. In 1999, USWA changed its affiliation to TCU. The recorded phone message at USWA headquarters in Queens, NY now proudly identifies the offices as: "USWA/TCU, AFL-CIO, CLC" (Central Labor Council). Since becoming a member of the AFL-CIO, USWA has broadened its reach into the construction industry, using its new affiliation to claim "jurisdiction" within the Building Trades. A recent memo from a USWA official asserts:

"USWA, TCU Local 339 has the jurisdiction to represent construction and building trades workers. We represent approximately 3,000 members in the construction and building trades fields."

In order to bolster the appearance of legitimacy, the group has produced correspondence signed by the "Director of Building Trades", falsely creating the impression that it belongs to the AFL-CIO Building Trades Division.

USWA's claim to jurisdiction has been strongly disputed by the Building and Construction Trades Councils of Greater New York, and of Nassau and Suffolk Counties, and by at least two employers' associations, the Building Trades Employers' Association, representing 21 New York contractors' associations and 1500 contractors, and Environmental Contractors Association. In fact, USWA has never been a member of the AFL-CIO Building Trades, either at state or national levels. Yet USWA is performing the work of carpenters, laborers and sheet metal workers.

While there is clearly an important jurisdictional issue raised here – Article 20 of the AFL-CIO Constitution states that it will take action to prevent one affiliate from organizing within the jurisdiction of another affiliate – the AFL-CIO's role may be limited by a clause which says that it will not enforce jurisdictional procedures within the construction industry. As a consequence, there is disagreement over whether or not the AFL-CIO can expel the USWA for operating within the jurisdiction of the Building Trades.

However, according to the Building and Construction Trades of Council of Greater New York, two Article 20 cases were won against Local 355 USWA during the 1990s when it was still part of SEIU. Moreover, the AFL-CIO Constitution also clearly states that it will not provide a charter for a union that is "in conflict with the jurisdiction of affiliated national or international unions, except with the written consent of such unions."¹ Therefore, sanctioning the USWA may be possible on the grounds that it is not operating within its charter.

The critical policy question raised by the controversy is whether or not the AFL-CIO will permit service unions to perform work beyond the scope of their charters that falls within the jurisdiction of the Building Trades. If the AFL-CIO fails to take firm steps to limit this type of activity, it could set a dangerous precedent that clears the way for other service unions to do the same. According to Jack Kennedy, President of the Building Trades Council of Nassau and Suffolk counties, the lack of enforcement by the AFL-CIO poses a direct threat to the Building Trades. When asked in a recent interview if John Sweeney had taken adequate steps to resolve the situation, he replied: "There should be a line drawn... We've been more than patient." He added: "Somebody's got to tell these people (USWA) that they're not chartered to do construction work -- they're chartered to do service work -- and to stay out of it". Kennedy pointed out that, without a clear line drawn between the jurisdictions of the Building Trades and other non-construction unions, any amalgamated union could easily expand into the jurisdiction of the Building Trades, ultimately posing a threat greater than that presented by USWA.

The current situation threatens to further complicate the internal dynamics of a troubled AFL-CIO by increasing tensions between labor leaders within the services and construction industries. Relations are already strained, particularly with the recent withdrawal of the 500,000-member Carpenters Union from the organization. Wayne Rogers, President of Local Union 7 of the Carpenters on Long Island and Senior Agent for the Suburban New York Regional Council, stated in a recent interview that the lack of disciplinary action against USWA by President Sweeney contributed to the tensions preceding the withdrawal of the Carpenters Union from the AFL-CIO.

While much of the debate regarding USWA revolves around the jurisdictional issue, there is growing evidence that USWA could be sanctioned on other grounds. A number of USWA's policies and activities are inconsistent with the interests of the employees it seeks to represent and thus, are at odds with the fundamental mission of the AFL-CIO. The potential costs to the AFL-CIO of sanctioning USWA with its 30,000 members, or the current parent international TCIU with its 100,000 members (including USWA), could be considerable. The possible loss of members is worthy of pause. However, the potential fallout may be far greater if no action is taken.

The AFL-CIO's "New Alliance" strategy, designed to revitalize the labor movement in the U.S., is critically dependent upon cooperation and mutual support between unions. The ability of the AFL-CIO to foster this cooperation would be greatly diminished if there were a perception that the AFL-CIO does not enforce Article 20 or if it permits member affiliates to undermine area standards by promoting substandard contracts. By failing to take decisive action against raiding, the AFL-CIO risks losing some of its own credibility within the labor movement. This is particularly true where there is the possibility of corruption or anti-labor abuses by the rogue union.

While it is certainly true that the recent history of a number of other established internationals has been marred by evidence of corruption or graft by union officials – the behavior of USWA raises more serious questions about the independence of the union as a whole from the interests of the employers with whom it contracts. The concerns regarding USWA's behavior are not a result of inappropriate behavior on the part of a few individuals working counter to the stated policy of the union. Instead, critics of USWA are concerned with what appears to be its unhealthy alliance with employers, and practices that may systematically compromise the interests of USWA members in order to compete with other locals.

In order to maintain its credibility, the AFL-CIO must make it clear that it will not tolerate behavior that undermines the interests of workers or shields employers from legitimate organizing activities protected by labor relations law. While the AFL-CIO has been careful to maintain a balance between enforcement of AFL-CIO policies and the autonomy of its member affiliates, a line must ultimately be drawn that defines when an affiliate's behavior can no longer be ignored.

A review of government documents, OSHA reports, past legal rulings, newspaper accounts, a number of documents provided by Building Trades locals, and interviews with labor officials and employers points to 6 main areas of concern regarding USWA's behavior. The AFL-CIO will have to decide whether or not the evidence regarding USWA's behavior is sufficient to warrant enforcement of AFL-CIO policies.

Six Main Areas of Concern

1) Raiding of Building Trades jurisdiction

For a variety of reasons related to the nature of construction work, unions in the Building Trades are far more susceptible than others to raiding by other unions. This is particularly true for the Laborers International, LIUNA, which represents workers in jobs requiring lower levels of skill and employing a higher proportion of recent immigrants². The Building and Construction Trades Department within the AFL-CIO was created in order to address the special needs of unions within the construction industry. The Council is made up of 15 international unions, each assigned a particular jurisdiction within the labor market, based on the craft of the associated members. And aside from the occasional border skirmish, each international avoids organizing workers employed in other crafts. Building Trades affiliates are generally recognized for their superior wages and benefits and government approved apprenticeship programs that raise skill and safety levels on the job.

Traditionally, a contractor in the construction industry who wants to hire union labor must either contract with member locals of the Building Trades Internationals or sign with an independent union that does not belong to the AFL-CIO. Typically, independent construction unions, with no oversight from a governing body like the AFL-CIO, offer sub-standard contracts with lower wages, fewer benefits, and no state-recognized apprenticeship program. The result is that the larger contractors, concerned with reputation and legitimacy, frequently sign with the AFL-CIO Building Trades Internationals.

But suppose for a moment that membership in the AFL-CIO was sufficient to give a contract with a service sector union the appearance of legitimacy, permitting an employer in the construction industry to claim that a job site is unionized while paying wages far below those received by members of Building Trades affiliates. In doing so, the employer could claim the legitimacy of an AFL-CIO union shop while cutting wages and obtaining protection from the organizing drives of the Building Trades locals.

Until recently, however, such unions simply didn't exist in the Northeast. Until, that is, United Service Workers of America, or USWA, an independent union claiming a membership of 30,000 mostly service workers, joined the AFL-CIO. USWA is an umbrella for as many as a dozen locals, sharing the same home office address in Queens, New York. By signing with employers who would otherwise contract with Building Trades affiliates, USWA is providing a safe haven for employers that want to create the appearance of legitimacy while cutting wages and worker protections. The fact that USWA has signed contracts with employers that are either targets of Building Trades organizing campaigns or have signed previously with Building Trades affiliates suggests that USWA is serving to undercut area standards, or worse yet, to shield employers from the organizing efforts of Building Trades affiliates. USWA's intent to compete with Building Trades affiliates is clear from defamatory statements regarding the Carpenters and the Laborers International made in pro-USWA fliers distributed to workers. It is also clear from correspondence distributed by two employer associations that have promoted USWA Local 339 as an alternative to Laborers Local 78. Last year, the president of Associated Employers Groups, Kevin Roots, was simultaneously the president of Affordable Abatement, an asbestos removal company that signed with Local 339 when its contract with the Laborers expired.

In July of 2000, representatives from the New York Building Trades met with Steve Elliott to discuss a possible agreement under which USWA would return to its historic jurisdiction in the auto sales and HVAC industries. To date no such agreement has been reached, though Jack Kennedy, President of the Building Trades Council of Nassau and Suffolk counties, reports that some progress has been made.

2) An Unhealthy Alliance with Employers

Rogue unions often maintain their competitive edge by collaborating with employers exposed to legitimate organizing efforts. Two alleged employer associations, the Association of Building Trades Contractors (ABTC) and Associated Employers Group (AEG), appear to have little other purpose than to promote USWA Local 339 to contractors, including those currently under contract with Locals 78 and 79 of the Mason Tenders. Kevin Roots, the President of Associated Employers Group said in a telephone interview in July of 2000 that "we hate Local 78". He then explained that members of both the ABTC and AEG only contract with Local 339, permitting them to "keep wages low." Fliers distributed by ABTC indicate that a principal purpose of the organization is to promote Local 339 as an alternative to Local 78. One flier summarizes a recent meeting of the group with:

“Our message was delivered. THERE IS A CHOICE!!! (*their emphasis*) Local 78 is not the only game in town. Local 339 AFL-CIO exists and is a strong and viable option.”

The agenda for one ABTC meeting includes a bullet: “Union offensive: Local 78”.

According to sources at the Mason Tenders, the President of USWA has claimed not to know Kevin Roots, the President of Associated Employers Group, Inc. or the company he owns, Affordable Abatement. The denial by Steve Elliott was reportedly made during mediation regarding an Article 20 case (regarding a jurisdictional dispute at Affordable Abatement) filed by Local 78. Associated Employers Group may have had little backing from legitimate employers. During the last year, Affordable Abatement stopped doing business in the New York Metropolitan area and Associated Employers Group disappeared.

3) Undermining of area standards through contracts that are sub-standard within the Building Trades

Contracts offered by USWA locals are clearly sub-standard when compared with those of the AFL-CIO Building Trades locals. Though both wages and benefits are lower, the gap in benefits is much greater. Construction trades are among the most dangerous occupations in the U.S., and as a consequence their benefits funds, which cover life insurance, health insurance, as well as disability and retirement benefits, typically represent a much higher share of a worker’s compensation than in other industries. For example, in early 2000, Local 339 signed a contract with DiSano Construction, which had reportedly been a target of an ongoing organizing campaign by locals in the Building Trades in New York. The following is a comparison of wage rates for Local 339’s carpenters on that job and those of New York City District Council Carpenters:

	Local 339	D.C. Carpenters
Journeyman	\$25 per hour	\$32.22 per hour
Foreman	\$27	\$34.72
General Foreman	\$35	\$37.22

All Local 339 workers on that job, except the General Foreman, receive roughly 20% less than the typical pay for D.C. Carpenters. But the really striking gap is in the benefits packages. While employers contribute only \$199 per month to the benefit funds of USWA workers, employers must contribute \$22.97 per hour, or roughly \$4,100 per month (assuming a 40 hour work week) to the benefits funds of D.C. carpenters, who receive roughly 40% of their compensation in benefits.

	Local 339	D.C. Carpenters
Journeyman	\$199 per <i>month</i>	\$22.97 per <i>hour</i>
Foreman	\$199 per month	\$22.97 per hour
General Foreman	\$199 per month	\$22.97 per hour

A comparison of USWA and Building Trades contracts and union books reveals similar gaps in other trades – though it is most pronounced among carpenters. The prevailing wage for asbestos workers in the Greater New York area during 1999 was roughly \$26 per hour (including benefits) and is based on standards set by collective bargaining agreements in the area. Local 78 Asbestos, Lead and Hazardous Waste Laborers are paid \$21.45 per hour plus \$4.55 per hour in benefits, totaling \$26, both for private and public work.

USWA compensation rates are generally considerably lower. Disturbingly, a review of compensation rates from recent USWA contracts suggests that USWA’s contractual wages may be falling in real terms. A contract dated July 1998 between Local 355 USWA and Fiber Control, Inc. set wages at \$20 per hour and roughly \$1.17 per hour for benefits (the benefits were set at a flat monthly rate of \$211), totaling \$21.17 per hour. Another standard USWA contract from roughly the same period sets wages at \$18 per hour in wages for Asbestos Handlers and roughly \$1 per hour for benefits (\$174 per month), totaling \$19 per hour. According to Kevin Roots, the hourly rate for a Local 339 (closely affiliated or synonymous with Local 355) asbestos worker last summer was \$17 per hour, plus roughly \$2.11 per hour for benefits (\$200 flat monthly welfare fund fee plus \$1 per hour for annuity and pension combined), totaling \$19.11 per hour.

4) Irregularities in benefits

While USWA's benefits packages are clearly sub-standard, there is also concern about irregularities in the payment of worker benefits into the appropriate benefits funds of USWA, and the use of funds collected. On May 14, 1996, a civil racketeering suit was filed in Federal court in Uniondale naming 70 defendants including Steve Elliott, the President of USWA, other union officials, insurance brokers and the Segal Co., a leading consulting and actuarial firm, concerning a \$7 million fraudulent health insurance scheme. According to a *Newsday* story, "The Welfare Fund had been used to provide health insurance through union memberships under bogus contracts resulting in as much as \$7 million being shifted into the pockets of insurance agents and brokers as well as into the treasury and severance benefit plan of the United Service Workers of America Local 255/355."³ Much of the investigation, made public by *Newsday's* labor reporter Ken Crowe, occurred while USWA belonged to SEIU. Under the pyramid scheme, members paid dues to two unions including Local 355 USWA. A share of the health insurance premiums collected from the members were deposited into USWA's benefit fund. The scheme collapsed when it became clear that medical bills were not being paid and the Fund folded, leaving members with millions in unpaid medical bills. A number of the individuals involved in the case were convicted. Steve Elliott has not been convicted and he remains the USWA President.

Critics of USWA also cite concerns over whether or not USWA is being sufficiently vigilant in ensuring that employers actually make the appropriate benefits payments on behalf of its members. In January 2000, the Commissioner of The State Insurance Fund won a \$113,969 judgment against Abax, for non-payment of benefits. The employees of Abax, an asbestos contractor, were members of USWA and were eligible for benefits through the United Service Workers Welfare Fund which is responsible for paying the workers' health care bills. On May 5, 2000, attorneys for LIUNA requested that the U.S. Department of Labor initiate a PWBA investigation into the missing health benefits of a number of employees at Abax.

According to Laborers Local 66 officials, the union has filed a lawsuit in an unrelated case regarding non-payment of benefits for Local 339 workers by a contractor, Fiber Control. In a prior contract Fiber Control had "double-breasted" by using both Local 66 Laborers and Local 339 USWA workers at the same job site. Some Laborers officials claim that Fiber Control did not pay benefits contributions for the USWA workers. Fiber Control denies the allegations and according to the contractor's attorney, Local 66 has yet to be successful in suing Fiber Control, even though it has filed 4 previous lawsuits against the contractor. However, documents also show that - though the attorney for USWA has threatened to counter-sue if Local 66 persists -- he has never done so, and he admits that no such suit has been filed to date. He also acknowledges that he has never seen proof, other than a letter of affirmation from USWA, that such benefits were ever paid by his client into the appropriate benefits fund.

In order to clarify compensation rates paid by employers to USWA workers, the author called Kevin Roots, the president of Associated Employers Group, in July 2000, posing as a contractor currently in negotiations with Local 78 of the Laborers. When asked about compensation rates for USWA workers, Roots indicated that contractors could "save money" on prevailing wage jobs through USWA's health benefits plan. The statement is a disturbing one, since total wages and benefits on a prevailing wage job must always equal the official rate determined for that geographical area. There is no way to legally "save money" on wages and compensation on a prevailing wage job.

5) Non-democratic practices

At least one employer, JBH, solicited membership in Local 339 from its employees by mailing out membership cards and a letter encouraging enrollment along with paychecks. According to Building Trades officials they have received other complaints from employees that contractors have encouraged or pressured them to join USWA.

A letter from the U.S. Department of Labor dated May 9, 2000 confirms that "a restrictive nomination procedure" in Local 339's constitution violates the Labor Management Reporting and Disclosure Act. The procedure eliminates the potential for democratic representation since it requires that a member of the union interested in running for executive office must first obtain a petition with 750 member signatures -- in a local with only 743 members. A number of employees have filed formal complaints.

A lack of democratic participation may help to explain the extraordinarily high salaries of USWA officials, which are among the highest for union officials in the United States, despite the modest size of the union. According to an article in the *Village Voice* by labor reporter Tom Robbins: "16 officers and employees of the United Service Workers of America earned more than \$100,000 in 1999, including the president's daughter, son-in-law, and brother in law." Together, the salaries of these 16 officials exceeds \$2.5

million. Steve Elliott, USWA president, made \$425,000, Peter DeVito, vice president, made \$424,993 and the secretary treasurer Edward Byrne made \$332,000, far higher even than the \$192,500 earned by John Sweeney, head of the national AFL-CIO.”⁴

6) *Questionable apprenticeship program*

In order to legally bid for prevailing wage contracts, employers must have an apprenticeship program. Last year, USWA was in the process of applying for state approval of an apprenticeship program. Sponsors of the apprenticeship program included the construction contractors Joseph A. Aragona and Sons, JBH Environmental, Inc. (see above), ALX Contracting Corp., Spring Scaffolding Inc., and ABAX Services Corp. (see above). LIUNA attorneys informed the Department of Labor’s Director of Employability Development that there were a number of problems with the application, including judgments against several companies, pending cases, and OSHA violations (including one fatality). Critics also drew into question whether or not the educational programs at SUNY Maritime College described in the application actually existed, particularly those related to classroom training. In order to verify concerns over the apprenticeship program, the author attempted to locate the apprenticeship classes and could not. According to Edward Drago, Director of Apprenticeship Programs at the Department of Labor, the application for approval of the apprenticeship program was recently withdrawn.

Conclusion

Over the last year, AFL-CIO Building Trades affiliates have had some modest success in limiting the expansion of USWA within the construction industry, with only limited support from AFL-CIO President John Sweeney. In the absence of Article 20 enforcement, the fight to limit operation of this one small service union within the jurisdiction of the Building Trades has taken a concerted and sustained effort on the part of both local and national Building Trades affiliates. The effort has consumed valuable time and resources that might otherwise have been invested in organizing new members or pursuing policy advocacy. The struggle with USWA has highlighted the need for a clear national AFL-CIO policy regarding enforcement of Article 20 among non-construction unions that attempt to operate within the jurisdiction of the Building Trades.

Workers and their families pay the full cost when high wage union contracts are lost to rogue unions offering employer concessions and sub-standard contracts. In an economy with a rapidly growing share of temporary and part time jobs, and a dwindling share of solid moderate income work, the implication for working families is troubling. Should the AFL-CIO continue to avoid addressing the encroachment of USWA into the jurisdiction of the Building Trades, it may set a dangerous precedent, leaving the door wide open to similar raiding activities in the future.

NOTES

¹ *Constitution of the AFL-CIO* (As Amended in 1999), Article III, Section IV. <http://www.aflcio.org>.

² Unlike other sectors of the economy, employers in the construction industry can enter into a contract with any union without approval or support from the employees on a job (an 8F contract). However, under such an arrangement employees at the site may be approached at any time by organizers from a different union. If the contracting union obtains signed union cards from a majority of the employees at a site, then after a period of six months it is shielded from external organizing efforts for the remaining duration of the contract (a 9A contract). When a contract expires, an employer is free to sign a contract with a different union so long as the company gives the proper notice before the end of the contract. The greater flexibility of contracts in the construction industry reflects the fact that it would often be difficult or impossible to perform a successful organizing campaign during the short duration of a construction project.

³ Kenneth Crowe, “A Nightmare of Medical Bills”, *Newsday* (1/18/98).

⁴ Tom Robbins, “Chasing the Rat: A Wealthy Union’s Tactics Infuriate its Rivals.” *Village Voice* (8/2/2000).

Niev Duffy is an Assistant Professor at the Mt Sinai School of Medicine and a Research Associate at the Center for the Study of Labor and Democracy. She holds a PhD. in Economics from NYU and is the author of “Recent Trends in the Gender Pay Gap in New York City and Long Island,” Regional Labor Review (Fall 1999).

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