

Case History

180 North Jefferson / Chicago, IL

The following article is an actual case history of the events surrounding an incident on a construction site in Chicago. The facts of the case history have not been changed or altered in any way. To do so would dilute the impact of what is happening and what this means to our profession. This case history revolves around the geotechnical engineering consultant, but don't be lulled to sleep by thinking that this is strictly a geotechnical engineering or construction materials testing problem, and that structural engineers don't have to worry. The geotechs and the testing firms that are currently fighting this battle in Chicago are simply the first targets, but they will not be the last. Soon, the structural engineers will not be permitted to visit construction sites on which structures they designed are being constructed, unless they belong to a trade union. Are you going to join a trade union so that you can perform your special inspections? Do you want your engineers to be represented by a trade union?

This is a very serious issue and as the STS CEO Thomas Wolf, P.E. said, "Either we hang together or we hang separately." Collectively, our professional organizations must stand up and be heard on this subject. David I. Ruby, P.E., S.E.

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ASFE Labor Relations Task Force

Fifield Development (Fifield) contacted STS Consultants, Ltd. (STS) in December 2002 to update a geotechnical analysis of a site located at 180 North Jefferson Street, Chicago, Illinois, where Fifield intended to develop a 28-story residential tower and parking garage. STS Senior Principal Engineer Clyde N. Baker Jr., P.E., S.E., a nationally and internationally honored professional, led the effort. Brian R. Reinicker, P.E., a project engineer, assisted Mr. Baker. Both individuals are registered professional engineers in the state of Illinois. Mr. Baker is also registered as a structural engineer.

STS' study confirmed that the tower required deep foundation support. Relying on pressuremeter testing data as the basis for the geotechnical analysis, Messrs. Baker and Reinicker recommended a caisson foundation system using a net allowable soil bearing pressure of 35,000 psf. Because the recommended bearing pressure exceeded the 12,000 psf maximum value indicated in the city building code then in effect, and because STS had used pressuremeter technology as the basis of the geotechnical analysis (thus limiting the engineers' ability to duplicate test procedures and results in the course of field verification), the building and foundation design permit issued by The City of Chicago required that the geotechnical engineer of record provide observation and testing services during foundation construction.

Fifield retained STS to observe caisson construction, as required by The City, and, on February 4, 2003, STS sent a quality assurance technician to the site. The technician was

surprised to encounter picketing by Local 150 of the International Union of Operating Engineers. (More than one year had passed since the union had initiated its campaign to organize STS' construction quality assurance technicians, and five months had passed since those technicians had voted 17 to 4 against union representation.) The technician left the site so as not to delay the project.

On Tuesday, February 11, 2003, Mr. Reinicker stopped by the development site. He checked in at the job-site trailer where a representative of Fred Teitelbaum Construction Company (Teitelbaum), the general contractor, informed him that a union-signatory testing firm, Flood Testing Laboratories, Inc. (Flood), had been retained to observe caisson installation, and that another union-signatory firm, H. H. Holmes Testing Laboratories, Inc., had been retained to observe excavation spoils for evidence of contamination (a quality assurance activity recommended by STS in its geotechnical engineering report).

Mr. Reinicker and the Teitelbaum representative left the trailer and walked up to the Flood representative who had completed the caisson observation services to that point. The Teitelbaum representative introduced Mr. Reinicker to the Flood representative who proceeded to inform Mr. Reinicker that, at several caisson locations, adequate soil bearing capacity could not be verified through testing and, accordingly, the caissons had to be oversized to compensate for the lower capacity.

While Mr. Reinicker was engaged in this conversation, a representative of Local 150 of the International Union of Operating

Engineers arrived and spoke briefly to the Flood representative. The union representative then returned to his vehicle and retrieved a sign stating that Local 150 was on strike against STS for unfair labor practices. The local 150 representative immediately began to picket and, seeing that, construction workers put down their tools and left the job site.

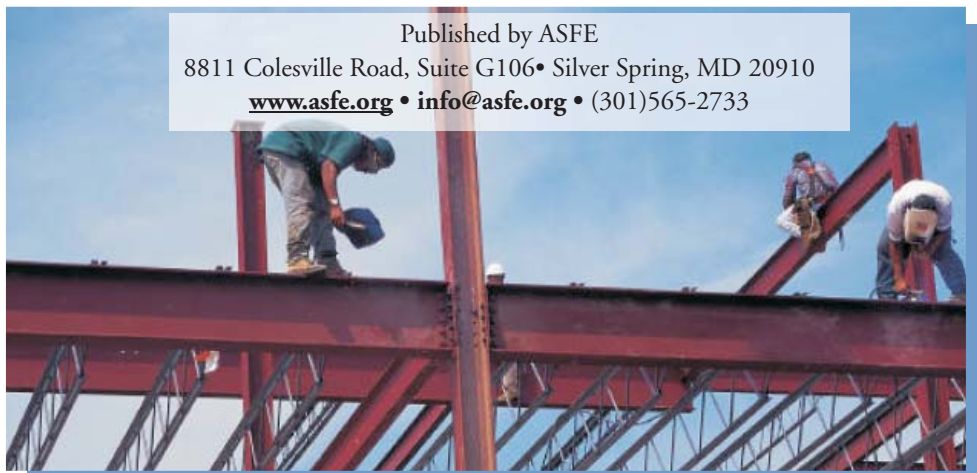
Mr. Reinicker returned quickly to the job-site trailer and spoke with representatives of Teitelbaum and Fifield. The Fifield representative suggested that Mr. Reinicker and the Teitelbaum representative speak with the Local 150 representative to explain that Mr. Reinicker represented the Geotechnical Engineer of Record and was coauthor of the geotechnical report for the project. The two did so, with Mr. Reinicker clearly identifying himself as a professional engineer and noting that none of the STS technicians the union desired to represent were on site or ever expected to be on site. The Local 150 representative did not care. He responded only by reading his sign and informing Mr. Reinicker and the contractor's representative that picketing would stop only when STS' project engineer left the job site.

Mr. Reinicker and the Teitelbaum representative returned to the job-site trailer. The Fifield representative asked Mr. Reinicker to leave the site and not return until Teitelbaum requested him to do so. Mr. Reinicker complied and, on his way out, he informed the Local 150 representative of his departure. The Local 150 representative immediately stopped picketing and the construction workers returned.

When notified of developments, The City threatened to pull its permit unless the

Geotechnical Engineer of Record was engaged either to provide engineering oversight of the construction observation and testing or to add geotechnical testing at specific caisson locations to reduce uncertainty in identifying the depth, type, and strength of the bearing strata. After much additional discussion, and in the face of the union's refusal to allow STS' project engineer to perform the services necessary to comply with the permit, the developer accepted an STS-conceived alternative that allowed the project to move forward. Instead of providing field observation to confirm caisson bearing conditions, STS was engaged to drill and perform pressuremeter testing at each yet-to-be completed caisson location so that the bearing elevation could be precisely identified in advance of caisson construction, substantially reducing uncertainty about bearing elevation and bearing strata, and the need for engineering judgment on the part of the caisson observation personnel. STS performed these services over an approximately two-week period during which no other significant construction work could proceed. The services comprised a considerable additional expense to Fifield. The expense was acceptable only because further delay would have been even more costly. ■

A Comment from STS CEO Thomas Wolf, P.E.: The concept of a trade union preventing professional engineers from performing their duty is abhorrent. We can understand the developer's position; it was not about to absorb hundreds of thousands of dollars' worth of delays in order to preserve the principle that representatives of professional engineers are not trades people and that, in any event, professional engineers should never be prevented from fulfilling their vital responsibilities to the public and their clients. The general contractor's outlook was understandable; it had no reason to intervene, nor was there anything STS could do about the situation on its own. We believe that the only step that can be taken to prevent a recurrence of this type of activity is for engineers to band together and take action that makes it clear that, as a group and as a profession, they will not tolerate such behavior and will work together in solidarity to maintain the principles involved. In my judgment, if the organizations that represent the profession of engineering are not willing to take the same "we're all in this together" approach as trade unions, we may one day soon find engineers looking to trade unions for leadership. Either we hang together or we hang separately.



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Professional Ethics and Conflict of Interest

By Lawrence H. Roth, P.E., G.E., FASCE, Deputy Executive Director, ASCE

For the past two years, Local 150 of the International Union of Operating Engineers (IUOE) has aggressively campaigned in the Chicago area to organize field technicians, those employed by engineering firms to provide materials testing services and to inspect work being done on construction sites. During this time, many ASCE members have expressed concern that if field technicians are represented by the same union as the construction workers whose work the field technicians inspect and test, then there is a potential for violating ethical obligations, and for potential conflicts of interest. The concern is that unionized field technicians, acting on construction sites as the “eyes and ears” of professional engineers may have a divided loyalty – first to the public and to the professional engineer responsible for oversight of the field technicians activities, and second to their union leadership, responsible for negotiating their terms of employment, and to their fellow union members, bound from criticizing their work because of the so-called “no-rat” provision. “No rat” provisions are often included in union bylaws to promote harmony within the union.

In May 2003, ASCE President Thomas L. Jackson published an article on the issue of unionization in ASCE News. In the same time frame, ASCE also formed a task committee to study unionization and ethics and to recommend an appropriate course of action to the ASCE Board of Direction. Following several meetings, the task committee prepared Policy 502 entitled Professional Ethics and Conflict of Interest (see www.asce.org for the complete text of the policy), which ASCE’s Board of Direction adopted on July 11, 2003. In that public policy, ASCE renewed its commitment and concern with protecting the independent judgment of the engineer and noted that conditions of employment and collective bargaining agreements must permit engineers to maintain their independence and avoid potential conflicts of interest to protect the public health, safety, and welfare. ASCE continues to promote Policy 502 and has encouraged its geographic and technical organizational entities, such as Institutes to do so as well.

Following the adoption of Policy 502, ASCE’s Executive Committee authorized the task committee to continue its evaluation of the

issue. In October 2003, ASCE’s government relations staff met with the President and chief lobbyist of the IUOE. In November 2003, I was asked to testify on behalf of Engineering Consulting Services, LTD., at a National Labor Relations Board hearing in Chicago regarding unfair labor practice allegations. During my testimony, a copy of ASCE’s Policy 502 was admitted into evidence at the hearing. In December 2003, Local 150 filed an unfair labor practice charge against ASCE with the National Labor Relations Board as a result of Policy 502. Following ASCE’s response, the NLRB dismissed that charge on February 13, 2004. Local 150 has since filed an appeal, which is currently pending.

Following a number of additional meetings, the task committee made a presentation to the ASCE Board of Direction about unionization and ethics issues on January 15, 2004. The most recent meeting of the task committee was in San Antonio on January 17, 2004. Additionally, ASCE’s Chicago Section organized and facilitated a meeting among multiple professional engineering organizations in Chicago on February 13, 2004, to share information and evaluate the issues. Continued educational awareness and outreach were topics of discussion. While certain aspects of the issue may be more applicable to other organizations, the Society has taken an active role in evaluating and acting on the issues within limits of available information and the scope of ASCE’s tax-exempt status for scientific and educational purposes. ASCE will continue to monitor the situation to determine if additional actions are merited to assist its members and the profession to uphold their ethical obligations, and to avoid potential conflicts of interest. ■

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Lawrence H. Roth, P.E., G.E., F. ASCE serves as the Deputy Executive Director of the American Society of Civil Engineers (ASCE) and is responsible for ASCE’s member services and its professional, technical, educational, and international activities. He is also responsible for ASCE’s lifelong learning programs including conferences and continuing education. Mr. Roth joined ASCE after a thirty-year career in consulting where he was a nationally recognized leader in civil and geotechnical engineering practice.