IV. PARTNERING: DISPUTE PREVENTION IN THE CONSTRUCTION INDUSTRY

TIMOTHY D.W. WILLIAMS*

On October 1, 1993, President Clinton signed Executive Order 12871: Labor Management Partnerships. By doing so he recognized the value of promoting positive relationships between union and management. While labor arbitrators are often familiar with labor management partnerships, such as the one created by the president, the familiarity does not necessarily extend to similar efforts to promote cooperative relationships. Public-private partnerships, strategic alliances, and intragovernmental partnerships have all been experimented with to varying degrees of success. Of the different applications, however, the use of project-specific partnering in the construction industry is probably the most notable. The Army Corps of Engineers is generally recognized to have initiated the formal use of the process in the late 1980s with projects in Alabama and Oregon.[1] Shortly thereafter the Department of Transportation (DOT) in a number of states began to develop and implement the process on major highway construction projects. Use of the process in the construction industry continued to expand across the country on major public works projects and into private sector construction. Projects using partnering, when compared with those continuing with the traditional approach to project management, benefited with regard to schedule, quality, and, in most cases, cost.

A number of different aspects of the partnering process will be looked at here, beginning by defining partnering and then proceeding to describe the steps by which partnering is implemented on a construction project. Finally, the essential elements that must be created through the partnering process if the process is to be successful will be set forth.

What Is Partnering?

Partnering is a difficult concept to define. However, partnering should not be construed as a legal partnership with the associated joint liabilities. Instead, partnering refers to a broad spectrum of

---

*Member, National Academy of Arbitrators, Portland, Oregon.

[1]Godfrey, Partnering in Design and Construction (McGraw-Hill 1996), 21, 31.

activities and informal working agreements that enhance and maintain cooperative relationships.

Partnering is often associated with alternative dispute resolution (ADR). However, it distinguishes itself from other processes, such as arbitration, mediation, good offices, and factfinding, in that it is initiated prior to the advent of any problem or dispute and can best be classified as a *dispute prevention* process. It works through building strong, cohesive, trusting relationships and by implementing throughout the life of the construction project an effective problem-solving approach to issues and conflict. More than just a problem resolution process, however, partnering is used to improve organizational effectiveness, focus on quality improvement, and promote project goal attainment.

The partnering process is often closely associated with the National Quality Initiative (NQI) and quality management efforts. Partnering is a tool and a process that can be used to help realize the objectives of the NQI and through which quality can be encouraged on a project or in an organization. Partnering works to thwart the primary enemies of quality—adversarial conflict, poor communication, and negative attitudes. Adversarial relationships are frequently a drain on organizational effectiveness. Organizations prosper when they are able to harness the payoffs of cooperative efforts.

Partnering recognizes that there are two parts to every construction project contract. The first part, the written contract, establishes the legal requirements of each party. The second part, the working relationship, describes how the parties communicate with each other, how they resolve disputes, and how they execute the contract to fulfill the needs of each party. The working relationship is based on an implicit covenant of good faith and fair dealing that applies to all contracts.

Traditionally most efforts concerned with promoting a problem-free project have been applied to the written contract. This work focuses on the preparation of project documents with the purpose of ensuring the technical and legal adequacy of those documents. However, the norm is to overlook the working relationship and provide little effort toward developing teamwork and cooperation among the key players. The construction industry has taken its chances with working relationships and hoped for the best. It has allowed the written contract and the law to resolve any difficulties with the project working relationships.

Partnering puts new emphasis on the working relationship. Through partnering we seek to improve our efficiency in achieving the goals described in the written contract by increasing the effectiveness of our working relationships.

The Partnering Task Force of the Construction Industry Institute offers the following definition for partnering:

> Partnering is a long-term commitment between two or more organizations for the purpose of achieving specific business objectives by maximizing the effectiveness of each participant's resources. This requires changing traditional relationships to a shared culture without regard to organizational boundaries. The relationship is based upon trust, dedication to common goals, and an understanding of each other's individual expectations and values. Expected benefits include improved efficiency and cost effectiveness, increased opportunity for innovation, and the continuous improvement of quality products and services.[2]

Partnering is a project management process that works to ensure that elements of teamwork and cooperation are present in all aspects of the work throughout the life of the construction project. Included among these elements are the following:

- Each party is aware of the needs and concerns of the other parties. A party does not take any action without considering who is affected and how they are affected. Any action that may have detrimental effect on another party is reconsidered and discussed with them before proceeding. Value is placed on assisting the other party achieve its objectives.
- Each individual adds value to the group. Individuals are recognized as having unique values that contribute to the relationship. Individuals are encouraged to contribute to any part of the relationship even though it may be outside their traditional role.
- Overall performance is improved. Each party is concerned with the performance of the entire group. Gains for one party are not at the cost of the overall performance of the team.

Partnering on a construction project can also be understood by clarifying what the process cannot accomplish. Partnering is not:

- A quick fix to traditional adversarial relationships. Changes in attitude and culture take years. Partnering should be a long-

---

[2]Partnering Task Force, In Search of Excellence, Construction Industry Inst. (Special Publication 17-1), July 1991.

term program for change from a "concern of only oneself" to a "concern for all parties" involved in the relationship.

- A guarantee of profit. Projects that are bid improperly or where organizational inefficiency hampers effectiveness will still produce losses. Risks that are assigned to one party by the contract remain with that party. Increased profits result from the long-term effectiveness of the group.
- A substitute for good plans, processes, or well-trained employees. Effectiveness will still be relative to the quality of the tools brought to the partnership.
- An unethical way of doing business. All activities are conducted within the terms of the written contract and within the law. The relationship is conducted to the highest professional standards and with total integrity. Personal favors or gratuities are absolutely prohibited.
- A substitute for the terms of the written contract. Partnering is an informal agreement describing the working relationship of the parties. The obligations of the written contract are still binding on each of the parties.
- A project level workshop only. Partnering involves the commitment of the entire group. Partnering starts with the CEO and is the primary responsibility of management. Cultural change takes place only when it is fully supported by management. Partnering will not survive in one unit of a company if partnering is not a part of the overall culture.

Partnering Implementation Steps

While there are many different approaches to implement partnering as part of the management strategy for the construction project, there are elements common to all of the approaches. The key element is the initial partnering session. That session, typically held after the contractor has been selected and before construction begins, lasts 1, 2, or 3 days depending on the complexity of the project. The partnering program is not a training session but rather a work session that is usually facilitated by an experienced partnering facilitator. During the session, the principal project participants work to achieve the following:

Commitment: Commitment to good faith and fair dealing begins with the top levels of management. However, the commitment to good faith and fair dealing must be held by all members of the

team. Management has the superior obligation to ensure that all members of the team understand the principles of partnering, including the mission statement and the common goals for the project. There must be a commitment by all parties toward achieving the objectives of all stakeholders to the contract.

Development of Mutual Goals: Teamwork comes from realization that the various stakeholders have mutual goals for the project. Development of the mutual goals at the partnering workshops helps the stakeholders see how their objectives interrelate with the objectives of the other stakeholders.

Equity: All stakeholders' interests must be considered when developing the mutual goals and objectives of the project during the partnering session. A stakeholder whose concerns are not included in the common goals and objectives will not be committed to the partnership.

Communication: Open and honest communication among team members is critical. Communication must be prompt and properly directed. Communication should be clear and issue based. It should not include innuendo, personality attacks, or be for the purpose of case building. The partnering session is also concerned with helping to implement efficient communication systems designed to accelerate decisionmaking. There are a number of formal and informal communication systems that link the contractor and the design team. These need to be clarified and *lubricated* to ensure effective, friction-free operation.

Trust: Trust and openness are critical for the early identification and resolution of issues. The sharing of information without fear of reprisal or retribution is key to developing teamwork.

Issue Resolution System: Problems are inevitable in any contract. Different interpretations of the contract, contract errors, and changes occur constantly. The team members must have a process for resolving issues quickly and fairly without faultfinding or exploitation.

Timely Responsiveness: Timely issue resolution and decisionmaking are critical to maintaining project schedules, cost control, and preventing issues from growing into claims. The issue resolution system must include mechanisms for rapid escalation to the next management level when issues are not resolved timely.

Evaluation: It is difficult to maintain any team. There needs to be scheduled periodic meetings to evaluate the quality of the partnering relationship and to ensure that the partnering goals are being met.

The periodic evaluation also provides the opportunity to update mutual goals to reflect any changes to the contract or to adjust for previously unknown forces acting on the partnering relationship.

The partnering facilitator also functions as a process consultant who has the primary responsibility for setting the partnering process into action. The facilitator most often designs a partnering program specifically for each project. The design methodology is dependent on project size and is based on a four-step approach. Those steps include:

- *Step 1:* Set a date agreeable to project participants and build an agenda for the initial partnering session by interviewing key project personnel to develop a broad understanding of the project. This step is achieved through direct interviews or telephone conversations with the project manager and other key individuals. The agenda is submitted for review and comment to the project managers.
- *Step 2:* Arrive on site and conduct a site visit and any additional interviews with project personnel. This will solidify the background information that can be used to customize partnering activities. In the case of a remote project, this step can be completed the day before the partnering session.
- *Step 3:* Conduct a 1-, 2-, or 3-day initial partnering session. As noted earlier, the agenda for the workshop should be tailored to the needs of the project. However, a typical agenda includes work sessions to develop mutual project goals and objectives, an issue resolution process, and an evaluation process—intermingled with team-building activities. Additionally, time is spent identifying potential project issues and action plans for mitigation or resolution. Other items, such as communication protocol, are added to meet the needs of the project and are developed as a result of the interview process in steps 1 and 2.
- *Step 4:* Schedule and conduct follow-up activities as designed during the partnering session. Typically there are informal follow-up activities on a monthly basis conducted by the project team, and formal follow-up sessions every 6 months, or as project conditions change (i.e., significant change in subcontractor participation due to the phases of the project). The formal follow-up sessions are typically conducted by the facilitation team.

Essential Tenets of the Science of Cooperation

Partnering has had and continues to have substantial impact on how major construction projects are managed. The results have been well documented[3] with significant benefits related to cost, schedule, and quality. Most dramatic, however, has been the reduction of adversarialness along with a reduction in litigation. But, a key concern for those involved with the partnering process is the extent to which the benefits of partnering can be sustained over time. Are the current results a passing fad or can the process permanently impact construction management. Thus, partnering as a basic management tool needs to be distinguished from partnering as the latest management gimmick.

Gerard Egan, in his latest work on managing the shadow side of an organization, addresses the issues of management fads when he writes:

> *Working the Shadow Side* would be a failure were it to do nothing more than start another fad. Fads such as total quality management and process reengineering are, at best, rediscoveries of value-added but underutilized managerial practices. At their worst, they are expensive distractions, rather than solutions for business problems. Increased skill in managing the shadow side, then, can add great value to the business, but it is not a panacea; it is an important part of an overall managerial system.[4]

Egan's reasoning can easily be applied to partnering. Partnering will ultimately be a failure if it is just a passing fad. What will mark its success, however, is the extent to which the process is recognized as a fundamental management tool and when it becomes "an important part of an overall managerial system." Partnering, in the sense of recognizing the value of cooperative relationships, is not new. Partnering is new only to the extent that it involves formal processes designed to build cooperative relationships.

Continuing with this same line of reasoning, partnering can be viewed as the implementation of the management science of cooperation. Viewing cooperation as a science has at least three advantages. First, science is concerned with predictable results and in partnering the effort is to predictably achieve a level of cooperation in relationships that benefit the construction project. Second,

---

[3]*See, e.g.*, Godfrey, *supra* note 1; Stephenson, Project Partnering for the Design and Construction Industry (John Wiley & Sons 1996).

[4]Egan, Working the Shadow Side (Jossey-Bass 1994), xiii, xiv.

to the extent that partnering reflects a basic science of cooperation, that science should be applicable to other situations (e.g., cooperative labor relations) and demonstrate similar results. To use this science effectively, the facilitator needs to be aware of the basic tenets related to building cooperation and then be able to adapt the implementation approach to the industry being served. Third, focusing on cooperation as a science helps to identify the essential elements that need to be a part of the management system if predictable results are to be achieved.

The following are set forth as a first step in identifying the basic tenets of the science of cooperation. These tenets are proven to have lasting value as part of a management system regardless of whether the term *partnering* is used, and should apply to any business relationship where cooperative efforts can produce positive results. The tenets include the fact that the science must focus on:

Building Constructive Relationships. Promoting good relationships is a basic part of the partnering process. Likewise, efforts toward building constructive relationships are an essential tenet in the science of cooperation, regardless of where it is applied. At the core of this concept is the recognition that we all function more effectively when working with others and if in our relationships, there is the presence of a positive, cooperative relationship as opposed to one that is adversarial and negative. Listening improves, communication is more open, decisions are more easily made, and there are many other constructive results that emerge when maintaining good relationships is set as a priority.

The science of cooperation fundamentally recognizes that the quality of a relationship is not dependent on the absence of disagreement or even conflict. There are often times when large payoffs are available when time and attention are focused on building relationships separate from any efforts made toward resolving issues or working on problems. The parties to a construction project take time, for example, to sit down and get to know each other without regard for any specific project-related purpose. Good relationships, in any situation, most often reflect a purposeful and mindful investment of time and other resources. This investment almost always returns dividends in terms of project or business effectiveness.

Promoting Foundational Elements of Good Relationships. Certain foundational elements are essential to the effective implementation of the science of cooperation. Without these foundational

elements, any effort to implement the science of cooperation, whether through partnering or some other process, is ultimately doomed to failure. The science of cooperation does not succeed unless there is a high level of trust, respect, and integrity in the relationship. In the alternative, there is the corrupting element of individuals who act in their own self-interests at the expense of the relationship. Acting in this manner chips away at the foundation that supports the cooperative relationship and ultimately will lead to the destruction of that relationship.

Seeing and Acting in Accordance With the Big Picture. The value of cooperative efforts are most always found in the big picture and in the long run. Parties to any business relationship will often be confronted by situations where there is the possibility of maximizing short-term gain through competitive actions. These competitive actions, however, undermine the basic tenets of the science of cooperation and ultimately reduce the amount of long-term benefit associated with the cooperative relationship. A basic reality of the science of cooperation is that movement back and forth between cooperative and competitive activities does not work. The trust necessary for high levels of cooperation will not emerge under the constant possibility of a competitive response.

Focusing on Cooperative Strategies. There are strategies of working together that are essentially competitive and those that are essentially cooperative. Cooperative strategies reinforce the constructive nature of the relationship and encourage joint activity. Implementation of the science of cooperation is dependent on individual participants being able to focus on the use of cooperative strategies. Frequently this has been a difficult task on construction projects where participants have, over time, developed a repertoire of competitive responses to different problem situations. These competitive responses must be identified, extinguished, and replaced with the more constructive positive strategies.

Making It Easy to do the Right Thing. Managerial systems and responses have the ability to increase or decrease the likelihood of cooperative, constructive actions by the consequences that are associated with those actions. If, for example, the open acknowledgment of a problem leads to adverse consequences, then participants can reasonably be expected to look for ways to avoid acknowledging the presence of the problem. The science of cooperation is dependent upon the development of management systems that recognize the importance of making it easy for participants to do the right things.

Conclusion

The goals of achieving high levels of collaboration and cooperation may be years in the future, and will require a basic understanding of the science of cooperation along with a massive cultural change in the public and private works contracting industry. However, partnering activities by public and private organizations today are starting to explore that territory and are demonstrating that change is possible. The new levels of trust and respect between organizations and their contractors are improving efficiency and job satisfaction. The changes that have already occurred have made partnering very successful. The successes and failures of these explorations will guide the changes that will truly benefit the construction industry and the public.