

# MARBA MATTERS

## GRIEVANCES AND ARBITRATIONS<sup>i</sup>

### Mid-America Regional Council of Carpenters Arbitrations

MARBA received one arbitration demand in the last month. The arbitration alleges a violation of Section 4.4 and Section 20.9.

### Laborers Joint Grievance Committee

The Laborers Joint Grievance Committee did not meet in April. The next JGC is scheduled to be held on May 30, 2023, at the Burr Ridge office of the Laborers, provided there are any cases set to go forward.

### Operating Engineers Joint Grievance Committee

The Operating Engineers Joint Grievance Committee met on April 5, 2023, at the Operators offices in Countryside to hear two (2) grievances. The first grievance involved an allegation that an Employer was using non-bargaining unit employees to run equipment. The JGC received evidence and heard testimony from both the Union and the Employer. After the parties' presentations the JGC issued an award in favor of the Union. The second grievance involved an allegation that an Employer was also using non-bargaining unit employees to run equipment. The Employer sent a letter to the JGC members explaining they have retired and sold the business and are not party to the CBA anymore. The Union put the grievance on hold while investigating that claim. The next regularly scheduled Local 150 JGC is scheduled to be held on June 1, 2023, at 8:30 a.m. at the offices of Local 150 in Countryside, IL. There are currently two (2) grievances on the docket.

### Teamsters Joint Grievance Committee

The Teamsters Joint Grievance Committee did not meet in April. The next regularly scheduled meeting is scheduled for May 25, 2023, at the Teamsters office in Burr Ridge, provided there are any cases set to go forward.

## COLLECTIVE BARGAINING/LABOR ISSUES

### Settlement Updates

Negotiation update emails started in early April. Generally, the update emails go out on Fridays of each week. The previous week's update can be found by clicking [here](#). There have been a few

negotiations that have already been settled. Many of the contracts that are being tracked do not settle until the end of May. As more settlements are reached, you can find information about the settlements on the MARBA website under the Resources tab.

## INDUSTRY NEWS

### *Construction Starts Up 19% in March 2023*

According to Dodge Data & Analytics, construction starts in the month of March were up 19%. Nonbuilding and nonresidential starts led the way increasing 17% and 33% respectively. Commercial construction starts, part of the nonresidential category, were up 28%, down slightly 5% from last year. Residential starts in the month of March lagged behind at 5%. While many of the largest starts for both nonresidential and nonbuilding were outside the Chicago area, all five regions saw an increase in construction starts. Also, according to Dodge, on a year-to-date basis through three months, total nonresidential starts were 6% higher than the first three months of 2022, indicating some resiliency in the industry despite some economic headwinds indicating a looming recession was on the horizon.

The largest nonresidential project to break ground in March was the \$5.5 billion dollar Hyundai EV plant located in Ellabell, Georgia. Also breaking ground was the \$3 billion dollar Panasonic Energy North America Battery Manufacturing Plant.

### *Michigan Repeals Right to Work Law*

Last month, the Michigan legislature voted to overturn the state's decades old right to work law. The law, which was on the books since being enacted in 2012, banned unions, both public and private, from requiring nonunion employees to pay union dues even if a union bargained on their behalf. The initial enactment of the right to work law was met with fierce opposition from the UAW which has a strong presence in Michigan. The Michigan legislature also voted to reinstate the State's prevailing law which had been on the books for over 50 years (since 1965) prior to being repealed. Union membership declined significantly since the state passed the right to work law in 2012. At the time the law was passed, Union membership in Michigan was at 629,000. In 2021, that number stood at 540,000. The repeal of the right to work law will take effect on March 31, 2024.

### *Biden's Nominee to Lead Department of Labor Up In the Air*

Julie Su, President Biden's pick to lead the Department of Labor, has been sent to the Senate floor for a vote after the Health, Education, Labor and Pensions (HELP) Committee voted along party lines to advance her nomination (11-10). Su, who currently serves as the Deputy Secretary of Labor, faces an uphill battle in the full Senate. She previously served as the California Labor Secretary. While in her role of California Labor Secretary, the Department was plagued by a

massive insurance fraud scandal in which \$20 to \$32 billion dollars were fraudulently paid to claimants. Su, if confirmed, will be replacing Marty Walsh who left the Department to serve as the head of the National Hockey League Players Association.

**STATE OF THE ECONOMY**

*Economic Indicators*

Unemployment Rate	March 2023 U.S. 3.5% (February 3.6%), Illinois 4.4% (45 <sup>th</sup> )
Labor Participation Rate	March – 62.6%, February - 62.5%, January 2023 - 62.4%,
CPI All Urban Consumers	March 2023 over March 2022 =4.98%
CPI Chicago All Items	March 2023 over March 2022 = 4.42%
CPI Midwest All Items	March 2023 over March 2022 = 4.87%
Union Membership	2022 = 10.1% (Private Sector 6.0%) 2021 = 10.3% (Private Sector 6.1%) 2020 = 10.8% (Private Sector 6.3%)
Rate of Unionized Construction Workers	11.7% (2022), 12.6% (2021) 12.7% (2020), 13.6% (2019)
30 Year Fixed Mortgage	Week Ending 4-21-23 6.39%, up 0.12% over the prior week. Annual Average 5.34% (2022), 2.96% (2021), 3.11% (2020)
15 Year Fixed Mortgage	Week Ending 4-21-23 5.76%, up 0.22% over the prior week. Annual Average 4.58% (2022), 2.27% (2021), 2.61% (2020)
Brent Crude Oil Price	\$ 80.22 per barrel (as of April 28, 2023) \$145.61 per barrel all time high July 2008 \$2.23 per barrel all time low May 1970
Privately Owned New Housing Building Permits	8.8% below revised February rate 24.8% below March 2022 rate
Privately Owned New Housing Starts	0.8% below revised February rate (+/-13.0%) 17.2% below March 2022 rate (+/-9.1%)
GDP	Q1 2023 (Adv) +1.1% Q4 2022 (3 <sup>rd</sup> ) +2.6

Q3 2022 (3<sup>rd</sup>) +3.2%  
 Q2 2022 (3<sup>rd</sup>) -0.6%  
 Q1 2022 (3<sup>rd</sup>) -1.1%

DJIA 34,029.11 as of April 28, 2023 (12:30 p.m.)  
 32,723.65 as of March 30, 2023 (12:30 p.m.)

**JANIK'S J.D. – AN UPDATE ON LABOR/CONSTRUCTION LEGAL ISSUES**  
**AARON JANIK- EXECUTIVE DIRECTOR MARBA**

**NLRB Rules Severance Agreements with Overly Broad Non-Disparagement Clauses Unlawful**

In February, the National Labor Relations Board issued a decision in the case of [McLaren Macomb and Local 40 RN Staff Council and Professional Employees, International Union, AFL-CIO \(OPEIU\) Case 07-CA-263041](#). The case involved a unionized teaching hospital in Michigan. The hospital permanently furloughed eleven (11) nurses. Each nurse was presented with a severance agreement and general release. The severance agreement contained the following clauses:

*Confidentiality Agreement. The Employee acknowledges that the terms of this Agreement are confidential and agrees not to disclose them to any third person, other than spouse, or as necessary to professional advisors for the purposes of obtaining legal counsel or tax advice, or unless legally compelled to do so by a court or administrative agency of competent jurisdiction.*

*Non-Disclosure. At all times hereafter, the Employee promises and agrees not to disclose information, knowledge or materials of a confidential, privileged, or proprietary nature of which the Employee has or had knowledge of, or involvement with, by reason of the Employee's employment. At all times hereafter, the Employee agrees not to make statements to Employer's employees or to the general public which could disparage or harm the image of Employer, its parent and affiliated entities and their officers, directors, employees, agents and representatives.*

Each of the eleven employees signed the agreement which also contained severe economic and injunctive sanctions in the event the agreement was breached. In offering the severance agreements to the employees, the Employer bypassed the Union and dealt directly with the individual employees. The Union filed a ULP against the Employer for violations of §8(a)(1) and §8(a)(5) of the NLRA. The ALJ ruled the Employer violated §8(a)(5) of the Act for failing to deal directly with the Union and permanently furloughing the employees. However, the ALJ ruled the Employer did not violate §8(a)(1) of the Act for offering severance agreements containing broad non-disparagement and confidentiality clauses. In ruling that the Employer did not violate §8(a)(1) of the Act, the ALJ relied on the precedent established under the *Baylor University Medical Center*, 369 NLRB No. 43 (2020) and *International Game Technology*, 370 NLRB No. 50, slip op. at 2 (2020) cases. In a general sense, those two cases held that non-disparagement and confidentiality clauses were lawful, absent some other evidence of unlawful conduct. Exceptions to the ALJ's decision were filed and the case was heard by the entire NLRB.

The NLRB ruled that ALJ was correct in determining the Employer violated the Act by furloughing the employees and not dealing with the Union directly. However, the Board disagreed with the ALJ's finding

the Employer did not violate the Act by offering the severance agreement with the non-disparagement and confidentiality clauses. Thus, they overruled the ALJ as it pertained to that finding.

The Board, in finding the mere offering of such a severance agreement was unlawful held, “an employer violates Section 8(a)(1) of the Act when it proffers a severance agreement with provisions that would restrict employee’s exercise of their NLRA rights.” The Board went onto to find, “[w]here an agreement unlawfully conditions receipt of severance benefits on the forfeiture of statutory rights, the mere proffer of the agreement itself violates the Act, because it has a reasonable tendency to interfere with or restrain the prospective exercise of Section 7 rights, both by the separating employee and those who remain employed.” The Board found the Non-Disclosure and Confidentiality sections of the severance agreement both violated the Act in that they restricted former employees from discussing almost anything having to do with their employment or separation from the company. The Board ruled this had a “chilling” effect on the employees’ statutory rights under Section 7 of the Act.

The Board ruled the Employer must reinstate the furloughed employees and make them whole. The Board further directed the Employer to cease and desist from unilaterally furloughing employees without bargaining with the Union. The Board has filed an Application for Enforcement of the NLRB’s decision in the 6<sup>th</sup> Circuit Court of Appeals. Subsequent to the *McLaren* case being decided, NLRB General Counsel Jennifer Abruzzo issued a memo, [GC Memo 23-05](#), which sought to provide guidance on the decision moving forward. One topic in the memo that is providing consternation for Employers is the issue of retroactivity with respect to severance agreements that were entered into prior to the *McLaren* decision being issued. According to GC Abruzzo’s memo, severance agreements that contain overly broad non-disclosure or confidentiality clauses are invalid. Thus, an agreement entered into in 2021 may now no longer be valid if the non-disclosure or confidentiality clauses are overly broad.

The memo indicated non-disclosure or confidentiality clauses are not necessarily unlawful if they are narrowly tailored and justified to prevent overly defamatory statements made by former employees. The memo further indicates standard disclaimers or savings clauses may not necessarily cure any potential issues with a non-disclosure or confidentiality clause that is deemed to be overly broad. Supervisors, while typically not covered under the NLRA, may also have the *McLaren* decision apply to them if they have a severance agreement offered to them containing an overly broad non-disclosure or confidentiality clause if the employer is retaliating against the supervisor for refusing to act on their employer’s behalf in committing an unfair labor practice. Finally, the memo indicated the *McLaren* decision may also apply to other types of agreements including employment agreements, job offer letters, or settlement agreements.

Employers will want to review the various agreements they may have on file to ensure they now comply with the recent decision and GC Abruzzo’s memo. Employers will also want to take note of the 6<sup>th</sup> Circuit Application for Enforcement action and any subsequent decisions issued in this area of law.

**UPCOMING SEMINARS/EVENTS**

**CAGC SPRING SUMMIT**

JOIN THE CAGC FOR THEIR SPRING SUMMIT AS THEY RECOGNIZE OUTSTANDING SAFETY PERFORMANCE

DATE: THURSDAY, MAY 18, 2023  
 TIME: 11:30 A.M. TO 2:00 P.M.  
 LOCATION: WESTIN LOMBARD  
 70 YORKTOWN SHOPPING CENTER  
 LOMBARD, IL 60148  
 COST: MEMBER REGISTRATION \$85  
 CONTACT: REGISTER BY CLICKING [HERE](#)

**CALENDAR**

MAY 3	9:00 A.M.	BRICKLAYERS NEGOTIATIONS (ELMHURST)
MAY 4	10:00 A.M.	TEAMSTERS NEGOTIATIONS (MARBA)
MAY 5	9:00 A.M.	BRICKLAYERS NEGOTIATIONS (ELMHURST)
MAY 9	11:00 A.M.	MIAF MEETING (MARBA)
MAY 9	12:00 P.M.	MARBA BOARD (DES PLAINES)
MAY 11	8:00 A.M.	BRICKLAYERS PENSION/HEALTH & WELFARE (ELMHURST)
MAY 15	9:00 A.M.	TEAMSTERS ARBITRATION (MARBA)
MAY 16	10:30 A.M.	CEMENT MASONS LMCC
MAY 16	9:00 A.M.	BRICKLAYERS NEGOTIATIONS (ELMHURST)
MAY 17	10:00 A.M.	TEAMSTERS NEGOTIATIONS (MARBA)
MAY 25	9:00 A.M.	TEAMSTERS JGC (BURR RIDGE)
MAY 30	9:00 A.M.	LABORERS JGC (BURR RIDGE)
MAY 31	10:00 A.M.	TEAMSTERS NEGOTIATIONS (MARBA)

<sup>1</sup> Information for MARBA Matters was obtained from the following sources: BNA Construction Labor Reports, Crain's Chicago Business, Northwest Times of Indiana, Chicago Tribune, and Sun-Times, CDQ, and the BLS, as well as various websites and other publications.

*Did You Know?*

May 4<sup>th</sup> is also known as Star Wars Day (May the 4<sup>th</sup> be with you).

THE FOUR MAJOR SPORTS ARE IN FULL SWING THIS WEEKEND

