

MARBA MATTERS

GRIEVANCES AND ARBITRATIONSⁱ

Chicago Regional Council of Carpenters Arbitrations

MARBA received one arbitration demand regarding the placement of a steward.

Laborers Joint Grievance Committee

The Laborers Joint Grievance Committee did not meet in November. The next meeting is scheduled for December 28, 2021, at the Laborers Burr Ridge office provided there are any grievances scheduled to go forward.

Operating Engineers Joint Grievance Committee

The Operating Engineers Joint Grievance Committee met on November 8, 2021, to hear an expedited grievance. The grievance alleged the Union was denied access to the jobsite. The Employer did not attend the JGC meeting. The Union presented its case including the fact the Employer told the Union Business Agent “they quit the Union”. The Union further presented evidence the Employer owed several years’ worth of dues and was considered “expelled”. Nonetheless, the Union presented evidence the Employer still was signatory to the Union through a Memorandum of Understanding. After hearing the testimony and reviewing the evidence, the JGC voted to uphold the grievance and issued an award in favor of the Union.

The next regularly scheduled meeting of the Joint Grievance Committee is set for December 1, 2021, beginning at 8:30 a.m. to be held at the offices of Local 150 in Countryside. There are currently four (4) grievances scheduled to be heard.

Teamsters Joint Grievance Committee

The Teamsters Joint Grievance Committee did not meet in November. The next regularly scheduled meeting is scheduled for December 30, 2021, at the Teamsters office in Burr Ridge, provided there are any grievances scheduled to go forward.

COLLECTIVE BARGAINING/LABOR ISSUES

Tech Engineers MOA Posted on MARBA Website

Earlier this year, the Technical Engineers Local 130 Pension Fund Trustees voted to merge the Technical Engineers Pension Fund with the Plumbers Pension Fund Local 130. The Plumbers Pension Fund Trustees also voted to merge the Funds. As a result, there were some changes that

were made to the Technical Engineers/MARBA collective bargaining agreement. The MOA the parties agreed to will take effect on January 1, 2022, and contractors' signatory to the MARBA agreement will see a reduction in the overall economic package. The MOA is posted on the MARBA website and can be accessed by clicking [here](#).

MARBA Holiday Memo

With the upcoming Christmas and New Year's holidays, contractors are reminded that the various collective bargaining agreements contain language about those two holidays. MARBA has posted a Holiday Memo on its landing page that discusses the various agreements as it pertains to those two holidays. The memo can be accessed by clicking [here](#).

INDUSTRY NEWS

President Biden Signs Infrastructure Bill - Illinois In Line To Receive Billions

On Monday, November 15, 2021, President Biden signed into law the Bipartisan Infrastructure Jobs Investment Act. The Act, which has a \$1.2 trillion dollar price tag, will see a total of \$550 billion dollars in new infrastructure investments over the next five years. Illinois is in line to receive a total of \$17 billion dollars in funding. This includes \$9.8 billion in federal funding for federal highway projects, \$1.4 billion for bridge repairs and replacements, \$1.7 billion for water infrastructure, \$100 million to upgrade broadband, and \$616 million for airport improvements.

PBGC Multiemployer Premium Increases to \$32 for 2022

The PBGC recently announced the rate increases for its multiemployer premiums. The rate for 2022 will increase by \$1 from \$31 (2021) to \$32 (2022). Within the past ten years the rate has increased 255% as it was \$9 per participant in 2012.

STATE OF THE ECONOMY

Economic Indicators

Unemployment Rate	October 2021 U.S. 4.6% (down 0.2%), Illinois 6.0% (40 th)
Labor Participation Rate	October 2021 = 61.6%, September 2021= 61.6%
CPI All Urban Consumers	October 2021 versus October 2020 = 6.22% Half 2021 versus Half 2020 = 3.37%
CPI Chicago All Items	October 2021 versus October 2020 = 5.30% Half 2021 versus Half 2020 = 3.08%

CPI Midwest All Items	October 2021 versus October 2020 = 6.64% Half 2021 versus Half 2020 = 3.68%
Union Membership	2020 10.8% (Private Sector 6.3%), 2019 = 10.3% Rate of Unionized Construction Workers = 12.6% 3.6% (2019), 13.8% (2018), 14.0% (2017)
30 Year Fixed Mortgage	October 3.07%, up 0.17% (September 2.90%) Annual Average 3.11% (2020)
15 Year Fixed Mortgage	October 2.31%, up 0.13% (September 2.18%) Annual Average 2.61% (2020)
Brent Crude Oil Price	\$70.49 per barrel (as of November 30, 2021) \$145.61 per barrel all time high July 2008 \$2.23 per barrel all time low May 1970
Privately Owned New Housing Building Permits	7.7% below revised September rate (+/-0.9%) Unchanged October 2020 rate (+/-1.1%)
Privately Owned New Housing Starts	1.6 % above revised September rate (+/-11.4%) 7.4% above October 2020 rate (+/-13.0%)
GDP	Q3 2021 (1 st) +2.0% Q2 2021 (3 rd) +6.7% Q1 2021 (3 rd) +6.3%
DJIA	34,513.43 as of November 30, 2021 (12:00 p.m.) 35,776.06 as of October 26, 2021 (12:00 p.m.)

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

2nd Circuit Rules Union Trustees Did Not Breach Fiduciary Duty When Amending Trust Documents

In a decision issued on November 30, 2021, the 2nd Circuit ruled that the Union Trustees of two multiemployer plans did not breach their fiduciary duty under the Employee Retirement Income Security Act (“ERISA”) when they voted to amend the two trust documents by a simple majority despite the fact the two documents called for unanimous consent to amend them.

The Funds at issue were situated in New York. Like most multiemployer funds in the construction industry the two funds are governed by Trust documents that detail the number of people that serve as Trustees (Union and Employer). In the case at bar, there were an equal number of Union (3) and Employer (3) Trustees. The trust documents governed which entities had the right to

appoint the respective Trustees. The trust documents further provided in order to amend the documents the Trustees would need to do so unanimously.

One of the Employer Trustees learned the entity that had appointed him was interested in replacing him as a Trustee. Shortly after learning of this, he introduced a new amendment to both trust documents that would have made his replacement ineligible to serve (thus making it difficult to replace him). The Union Trustees, in addition to the Employer Trustee who introduced the amendment, voted to approve it. The other two Employer Trustees voted against the Amendment. The minutes of the meeting reflect the amendment passed 4-2.

Shortly after the amendments passed, the entity that appointed the Employer Trustee who had introduced the amendment removed him as Trustee and nominated a replacement. The Union Trustees cast a vote against accepting his appointment as he did not meet the “new” requirements. The “new” Trustee tried to be seated at one more meeting and again the Union Trustees would not cast their votes in favor of seating him. After the second attempt to seat the new Employer Trustee, the other two Employer Trustees filed suit in District Court alleging a breach of fiduciary duty pursuant to ERISA (among other claims).

The District Court granted the Employer Trustees motion for summary judgment finding the Union Trustees violated their fiduciary duty pursuant to ERISA when it voted to accept the amendment which changed the manner in which the Trustees were appointed. The District Court denied the Employer Trustees' request for attorney's fees and dismissed their request for an injunction as moot. The Union Trustees appealed. The Employer Trustees cross-appealed.

The 2nd Circuit held the Union Trustees did not breach their fiduciary duty when they voted to accept the amendments as they were not acting as fiduciaries when they voted to amend the trust documents. Rather, the Court held, the Union Trustees were acting in a settlor capacity. The Court held that an individual acts as a settlor when they, “make a decision regarding the form or structure of the plan such as who is entitled to receive plan benefits and in what amounts, or how such benefits are calculated.” In this instance, the Court held the amending of the trust documents, in contravention of its plain language calling for unanimity to make amendments, was not a fiduciary function but rather one of a settlor.

A copy of the decision can be found by clicking [here](#).

UPCOMING SEMINARS/EVENTS

CAGC CONSTRUCTORS CONNECT

JOIN THE CAGC AS THEY UNVEIL THE PROJECT OF THE YEAR AND MEMBERSHIP AWARDS AS WELL AS HEAR FROM STEVE SANDHERR OF AGC OF AMERICA

DATE: THURSDAY, DECEMBER 9, 2021
 TIME: 11:00 A.M. TO 2:00 P.M.
 LOCATION: THE CARLISLE
 435 BUTTERFIELD ROAD
 LOMARBD, IL 60148
 COST: \$150 FOR MEMBERS/\$220 FOR NON-MEMBER (SPONSORSHIPS AVAILABLE)
 CONTACT: EMILY STEINMETZ ESTEINMETZ@CHICAGOLANDAGC.ORG OR REGISTER [HERE](#)

CALENDAR

DECEMBER 1	8:30 A.M.	OPERATING ENGINEERS JGC (COUNTRYSIDE)
DECEMBER 9	11:00 A.M.	CONSTRUCTORS CONNECT (LOMBARD)
DECEMBER 14	12:00 P.M.	UCA EMERGING LEADERS PROGRAM (ROSEMONT)
DECEMBER 28	9:00 A.M.	LABORERS JGC (BURR RIDGE)
DECEMBER 30	9:00 A.M.	TEAMSTERS JGC (BURR RIDGE)

¹ 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?

Jingle Bells was composed in 1857. While many consider it to be a Christmas song it was initially composed for the Thanksgiving holiday.



THE MARBA OFFICE WILL BE CLOSED ON FRIDAY DECEMBER 24, 2021.