

Grievances and Arbitrations¹

Chicago Regional Council of Carpenters Arbitrations

MARBA received one arbitration request this month regarding placement of a steward.

Laborers Joint Grievance Committee

The Laborers Joint Grievance Committee did not meet in October. The next regularly scheduled meeting is set for November 24, 2020, at the Laborers Burr Ridge office beginning at 9:00 a.m.

Operating Engineers Joint Grievance Committee

The Operating Engineers Joint Grievance Committee did not have a regularly scheduled grievance committee meeting in October. The next meeting is scheduled for November 11, 2020 at the Operating Engineers offices in Countryside. There are currently eleven (11) grievances on the docket although eight (8) are filed against the same employer.

Teamsters Joint Grievance Committee

The Teamsters Joint Grievance Committee met on October 29, 2020 to hear one (1) grievance alleging violations of five (5) separate article that occurred over the course of several days. The alleged violations concerned Subcontracting, Pre-Job Conference, Seniority, and Owner-Drivers. After presentations by both the Local and the Employer the Committee deadlocked on three of the alleged article violations and denied the alleged article violations for the remaining two. The Union retains the right to pursue the deadlocked allegations through the arbitration procedure. The next regularly scheduled grievance committee hearing is scheduled November 26, 2020. However, since that is Thanksgiving that hearing would need to be rescheduled provided there would be any grievances to be heard.

Collective Bargaining/Labor Issues

2021 Bargaining Rights Packets To Be Distributed in December

MARBA is in the process of preparing the 2021 Assignment of Bargaining Rights packets to be distributed via MARBA Member Associations. The distribution will occur in early to mid-December. These forms will have deadlines that employers will need to adhere to. Please be on the lookout for this important information in the coming few weeks.

Industry News

NLRB Looks to Attack Scabby the Rat

In July 2019, an ALJ for the National Labor Relations Board issued a decision in a case involving a local union that posted two banners and large, 12-foot, inflatable rat at the entrance to an RV trade show in Elkhart, IN. The placement of the banners and rat made it clear to anyone entering the trade show that there was a labor dispute ongoing. The ALJ ruled that the placement of the banners and the rat did not violate the NLRA. However, after the ALJ issued their decision, the NLRB's General Counsel decided to appeal the ruling, effectively limiting the use of Scabby the Rat. In a brief filed with the NLRB it called the

rat and banners, “a symbolic and confrontational barrier” to members of the public entering/exiting the RV show. Parties not involved in the case have until December 28, 2020 to provide comments on the matter.

CDC Changes Definition of Close Contact

During the COVID-19 pandemic the CDC had been defining “close contact” as a person who was within 6 feet of COVID-19 positive individual for 15 minutes or more, 2 days before symptoms occurred (or 2 days prior to test collection for asymptomatic individuals).

However, on October 21, 2020, the CDC changed the definition of “close contact” to someone who was within 6 feet of an infected person for a **cumulative total** of 15 minutes or more over a 24-hour period. The cumulative total (i.e. three 5-minute exposures) should consider the circumstances of the contact (i.e. total distance, symptoms present, generating aerosols, etc.). The revised CDC definition of close contact can be found by clicking [here](#).

IDOL and IDOT Issues Statement Regarding Certified Payroll

On October 19, 2020 both IDOL and IDOT issued a joint statement regarding when a contractor is required to submit certified payroll. The statement asks contractors to review their contracts to determine if the project is subject to the Illinois Prevailing Wage Act or if it is subject to the Davis-Bacon Act. If a contractor has questions regarding the certified payroll process, they can contact Deputy Director Jason Keller at IDOL (the agency in charge of overseeing IPWA compliance) via phone at (217) 782-1706

State of the Economy

Economic Indicators

Unemployment Rate	September 2020 U.S. 7.9%, Illinois 10.2%(47 th)
Labor Participation Rate	September 2020 = 61.4%, August 2020 = 61.7%
CPI (All Urban Consumers)	September 2020 versus September 2019 = 1.37% Half 2020 = 1.24%
CPI Chicago All Items	September 2020 versus September 2019 = 1.38% Half 2020 = 1.23%
CPI Midwest All Items	September 2020 versus September 2019 = 1.27% Half 2020 = 0.86%
Union Membership	2019 = 10.3% (Private Sector 6.2%), 2018 = 10.5%
Rate of Unionized Construction Workers	13.6% (2019), 13.8% (2018), 14.0% (2017)
30 Year Fixed Mortgage	September 2.89%, down 0.05% from August 2.94% Annual Average 2019 = 3.94%, 2018 = 4.54%

15 Year Fixed Mortgage	September 2.39%, down 0.13% from August 2.52% Annual Average 2019 = 3.39%, 2018= 4.00%
WTI Crude Oil Price	\$ 35.79 per barrel (as of October 30, 2020 at close) \$110.62 per barrel all time high Year Close 2013 \$ -40.32 per barrel (May 2020) all time low March 2020
Privately Owned New Housing Building Permits	5.2% above revised August rate (+/-1.6%) 8.1% above September 2019 rate (+/- 1.8%)
Privately Owned New Housing Starts	1.9% above revised August rate (+/-8.8%)* 11.1% above September 2019 rate (+/- 11.3%)
Housing Completions	15.3% above revised August rate (+/-11.4%)* 25.8 above September 2019 rate (+/- 11.5%)
DJIA	26,501.60 as of October 30, 2020 (close) 27,781.70 as of September 30, 2020 (close)

Janik's J.D. – An Update on Labor/Construction Legal Issues
Aaron Janik – Executive Director MARBA

Worker's Compensation Case Decided Regarding Cases Arising Out of Employment

In late September 2020, the Illinois Supreme Court issued its decision in the case of *McAllister v. Illinois Workers' Compensation Commission*. The case began in 2014 when the Claimant, a sous-chef, injured his right knee while standing up from a kneeling position while he was in the Employer's walk-in freezer searching for a pan of carrots that had been misplaced by one of his co-workers. The injury to his right knee (which had previously been injured and surgically repaired) caused the Claimant to be unable to straighten his leg. He hopped on one leg into his boss's office and discussed the injury. After some discussion he was taken to the emergency room. He was subsequently diagnosed with a torn medial meniscus. The Claimant had surgery a few days later which he paid for out of pocket. He was prescribed physical therapy but did not finish the prescribed number of sessions as he was paying for that out of pocket as well. He returned to work about two months after surgery and therapy with no restrictions.

He filed a claim for benefits and the arbitrator awarded him temporary total disability (TTD), permanent partial disability (PPD), and medical expenses. The arbitrator also issued a ruling finding the Employer's refusal to pay benefits was unreasonable and imposed penalties against the Employer as well as the Claimant's attorney fees. The Employer asked the Commission to review the arbitrator award and on review the Commission found the Claimant failed to prove his knee injury "arose out of" his employment because he was "subjected to a neutral risk which had no particular employment or personal characteristics". The Claimant appealed to Circuit Court and the Circuit Court ruled that the claimant's act of standing up from a kneeling position was a neutral risk that did not expose the claimant to more risk than that to which the general public was exposed. As a result, the Circuit Court upheld the Commission's decision holding that the claimant had been subject to a non-compensable neutral risk.

The Claimant continued to press the matter and appealed to the Workers' Compensation Division of the Appellate Court. The Appellate Court ruled by a majority the Claimant was not injured due to an employment related risk and that the determination of the Commission was not against the manifest weight of the evidence. The Appellate Court, however, was split on whether a compensable injury can "arise out of" an employee's employment when the employee is injured while performing job duties that involve "routine" activities (bending, standing up from kneeling, etc.).

The Appellate Court cited *Caterpillar Tractor Co. v. Industrial Commission* (1989) which stands for the proposition that an injury arises out of a claimant's employment if the claimant was performing an act that he might reasonably be expected to perform incident to his assigned job duties or casually connected to what the claimant must do to fulfill his assigned job duties even if the act involves an everyday activity. The Appellate majority, however, found that the Claimant's act of looking for his co-workers misplaced pan of carrots was not distinctly related to his employment. The Claimant filed for a rehearing which was denied. The Claimant filed a leave to appeal with the Illinois Supreme Court which was granted.

The Supreme Court looked at the case *de novo* (anew). They held to obtain compensation under the Act a claimant bears the burden of proving by a preponderance of the evidence two elements. First, that the injury occurred during claimant's employment. Second, the injury arose out of claimant's employment. In the course of employment deals with the time, place, and circumstances of the injury. Since it was undisputed the claimant was at work when the injury occurred the Supreme Court only needed to address the second element in order to determine whether the claimant was entitled to compensation, whether his knee injury "arose out of" his employment. The term "arising out of" employment is concerned with causal connection.

The causal connection can primarily be divided into three categories of risk; 1) risks distinctly associated with the employment, 2) risks that are personal to the employee, 3) neutral risks which have no particular employment or personal characteristics. The first type of risks is those along the lines of tripping on a defect at the employer's premise or performing some work-related task. The second type of risk is personal to the employee and do not arise out of employment (such as suffering from bouts of dizziness). The third type of risk involves neutral risks that have no particular employment or personal characteristics. Examples of these types of neutral risks as listed by the Court included, "bullets, dog bites, lunatic attacks, lightning strikes, bombing, and hurricanes."

The Court went onto analyze whether the Claimant's injuries arose out of an employment related risk (that is a risk distinctly associated with the Claimant's employment). The Court noted a risk is distinctly associated with an employee's employment if they were 1) performing acts they were instructed to perform by the employer, 2) acts that they had a common law or statutory duty to perform, or 3) acts that employees might reasonably be expected to perform incident to their assigned duties. The Court found the evidence established the claimant's knee injury was incident to his employment because the act of kneeling looking for a co-worker misplaced pan of carrots was an act his employer might reasonably be expected to perform. The Court also stated, "injuries sustained while extending ordinary courtesies to fellow employees are within the reasonable incidents of the employment." Lastly, the Court held, "it would be contrary not only to human nature but to the employer's best interests to forbid employees to help each other on pain of losing compensation for any injuries sustained."

The Court went onto look at whether a compensable injury case arise out of an employee's employment when the employee was injured performing job duties that involve common bodily movements or

everyday activities. The Court held that the proper analysis for determining whether the injury sustained is one that results from an everyday movement it must first be determined whether the employee was injured performing one of the three categories of employment related acts. The Court found a claimant does not have to provide additional evidence that they were exposed to the risk of injury to a greater degree than the general public once they have presented proof that they were involved in an employment related accident.

This case has not garnered much attention outside of the Workers' Compensation community yet. However, since this changes the analysis for injuries sustained at work concerning everyday movements it has the potential to expand to other claims filed outside the restaurant industry. It was noted during in the ruling that the Illinois Trial Lawyers Association filed an amicus brief supporting the Claimant's position. The case, *McAllister v. Illinois Workers' Compensation Commission* 2020 IL 124848 can be found by clicking [here](#).

Upcoming Seminars/Events	Calendar
<p><u>CAGC Annual Meat Raffle (Virtual)</u></p> <p>Please join the CAGC for their Annual Meat Raffle from the comfort of your own home!</p> <p>When: November 8, 2020 at 12:00 p.m.</p> <p>To find out more information please click here.</p>	<p>November 4 12:00 p.m. LERA Webinar</p> <p>November 5 9:00 a.m. ISBA Construction Webinar</p> <p>November 6 8:00 a.m. BAC Pension/H&W Meeting</p> <p>November 10 12:00 p.m. MARBA Board Meeting (online)</p> <p>November 11 8:30 a.m. Operating Engineers JGC (Countryside)</p> <p>November 24 9:00 a.m. Laborers JGC (Burr Ridge)</p> <p>November 26* 9:00 a.m. Teamsters JGC (Burr Ridge) *if necessary, new date will be needed (Thanksgiving)</p>
<p>Did You Know: Michelangelo's famous Sistine Chapel paintings went on display on November 1, 1512. He initially started the paintings in 1508.</p>	

ⁱ 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.

*The 90 percent confidence interval includes zero. In such cases, there is insufficient statistical evidence to conclude that the actual change is different from zero.



The MARBA office will be closed on Thursday, November 26 and Friday November 27 in observance of Thanksgiving. We will re-open Monday, November 30.