

MARBA MATTERS

GRIEVANCES AND ARBITRATIONSⁱ

Mid-America Carpenters Regional Council Arbitrations

MARBA received one (1) demand for arbitration regarding Article X of the agreement (Stewards).

Laborers Joint Grievance Committee

The Laborers Joint Grievance Committee did not meet in September. The next JGC will be held on November 7, 2023, at the Burr Ridge offices of the Laborers. There are three (3) cases to be heard.

Operating Engineers Joint Grievance Committee

The Operating Engineers Joint Grievance Committee met on October 4, 2023, to hear two (2) grievances. The first case involved an allegation that a contractor was improperly staffing de-watering pumps. The contractor and the Union settled the case during the hearing. The next grievance involved an allegation that an owner-operator was performing work while not being in good standing with the Union. The contractor failed to appear and as such the JGC was left to decide the case based on the presentation made by the Union. Therefore, a decision was issued in favor of the Union. The next regularly scheduled JGC will be on December 6, 2023, at the Operating Engineers office in Countryside.

Teamsters Joint Grievance Committee

The Teamsters Joint Grievance Committee met on October 12, 2023, at the MARBA offices beginning at 9 a.m. to hear one (1) case involving a termination. The case involved an employee that was off work due to a medical condition. The employee was released to return to work on July 6 but did not return. The employer attempted to contact the employee for the next several days. After not getting in touch with the employee, the employer sent termination paperwork to the employee and the Union. Shortly after the paperwork was sent, the Employer was contacted by a medical facility claiming the employee was still receiving treatment. The Employer received no other communications from the employee or anyone on their behalf for several weeks.

Upon being released from the facility, the employee filed for disability. The employee sent paperwork to the employer with inconsistent information in it regarding the timing of their absence. As a result, the employer would not sign off on the disability paperwork. The employer was in communication with both the employee and Union after they would not sign the disability paperwork. The Union filed a grievance on behalf of the employee in mid-September alleging a wrongful termination.

At the hearing, the employer presented its case first as it had to prove it properly terminated the employee. The employer presented a timeline of events which included the several times it attempted to contact the employee to no avail. The employer also presented the defense that the grievance was

untimely as the contract requires a grievance to be filed within seven (7) days. The employee and Union both presented on the employee's behalf. The employee indicated he was in an out of state facility receiving treatment for their situation. The Union claimed that the Employer had an obligation to work with the employee so the employee could receive the proper treatment. After hearing the testimony of the witnesses and receiving the evidence presented by the parties, the JGC denied the grievance. The next JGC is set for Thursday, November 30, 2023, at 9 a.m. at the MARBA offices provided there are any cases set to go forward.

COLLECTIVE BARGAINING/LABOR ISSUES

MARBA and Carpenters Reach Five Year Extension Agreement

MARBA and the Mid-America Carpenters Regional Council (MACRC) recently signed off on a five-year extension agreement covering the four (4) CBAs the parties have with each other. The extension will begin to take effect on June 1, 2024, and run through May 31, 2029. The terms of the extension agreement call for total economic increases of 4% each year. There were no work rule changes made to the existing agreements. MARBA has sent out paperwork to the MARBA Associations for contractors to review, fill out, and return to the MARBA office. If you have not received it or have questions contact ajanik@marba.org.

Two Weeks Until MARBA's Collective Bargaining Seminar

MARBA is pleased to announce it will be hosting a full day collective bargaining seminar covering all aspects of collective bargaining. Speakers include Rick Samson (Ogletree Deakins), Christina Wernick (Laner Muchin), and Aaron Janik (MARBA). The seminar will be held at Maggiano's in Oakbrook on Wednesday, November 15, 2023. On-site registration and a causal breakfast will begin at 7:30 a.m. After some brief opening remarks, the seminar will begin at 8:30. The seminar will conclude at 3:45-4:00 p.m., after which a small cocktail reception will be held. The topics covered, to name a few, will include preparation prior to bargaining, setting priorities, and multi-employer bargaining issues. There will also be time for a Q & A with the presenters. There are still a small number of seats left. If you would like to attend, please contact Aaron Janik at ajanik@marba.org or you may register by clicking [here](#).

INDUSTRY NEWS

Illinois Department of Labor to Host Webinar Regarding Paid Leave for All Workers Act

The Illinois Department of Labor has been hosting a series of webinars regarding the new Paid Leave for All Workers Act. The Act requires employers to grant employees five (5) paid days off regardless of the reason. The Act, which takes effect on January 1, 2024, exempts construction employees covered under a bona fide collective bargaining agreement. However, those not covered under a bona fide CBA are subject to the Act's requirements (with a few exceptions). To find more information about the Act or to register for the IDOL webinars please click [here](#). The Department has also updated their Paid Leave for All Workers Act FAQ page based on some of the questions coming in via the Department's webinars. You can access the FAQ by clicking [here](#).

City of Chicago Proposing 15 Days Paid Time Off

The Paid Leave for All Workers Act referenced in the preceding paragraph takes effect on January 1, 2024, as already noted. However, the City of Chicago was left out of that legislation and as a result they must enact an ordinance by January 1, 2024, otherwise the City’s sick leave ordinance which can only be used in instances of a sickness, or an illness will be eclipsed by the state law which allows time off for any reason.

In July, Alderman Mike Rodriguez – 22nd Ward, proposed an ordinance that would require employers in the city provide their employees with 15 paid days off. The proposed amendment initially called for more employee friendly terms but after negotiations with several business groups including the Chicago Chamber of Commerce, Illinois Restaurant Association, and the Illinois Retail Merchant Association, a compromise ordinance was crafted allowing for an employee to receive 7 sick days and 8 paid days off (i.e., vacation). The ordinance would also allow for carryover from year to year of up to 14 days. An employer would only be allowed to ask for documentation if the absence was going to be three days or longer for medical reasons. (Note: at the time this month’s MARBA Matters was sent out the City Council was still deliberating the ordinance, including the number of days it would cover).

Succession Planning for the Construction Industry

Lately, succession planning has been a topic of great interest in the construction industry. Earlier this year, MARBA, in conjunction with its member Associations, put together a seminar led by Mark Breslin entitled the Five-Minute Foreman. The purpose of the seminar was for industry leaders to hear from an expert on what to look for in the next generation leaders out in the field.

As part of the continued discussion on succession planning, the Plumbing Contractors Association (PCA) along with six other industry associations have planned a half-day seminar regarding succession planning within the construction industry. There is a \$100 cost for those attendees not affiliated with the sponsoring associations. The event will be held at the Marriot Delta in Willowbrook and will run from 8 a.m. to 2 p.m. on Thursday, November 16. Questions regarding the seminar can be directed to SJ Peters, Executive Director of the PCA of Greater Chicago. He can be reached by email by clicking [here](#) or by calling him at 312-563-9526. A copy of the flyer which discusses the event can be found at the end of this month’s MARBA Matters.

STATE OF THE ECONOMY

Economic Indicators

Unemployment Rate	September 2023 U.S. 3.8% (August 3.8%), Illinois 4.4% (47 th)
Labor Participation Rate	September 62.8%, August 62.8%, July 62.6%
CPI All Urban Consumers	September 2023 over September 2022 = 3.7% Half Year 2023 = 4.88%
CPI Chicago All Items	September 2023 over September 2022 = 2.28% Half Year 2023 = 4.15%

CPI Midwest All Items	September 2023 over September 2023 = 3.52% Half Year 2023 = 4.55%
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	As of 10-19-23 7.63%, up 0.69% over the prior year. Annual Average 5.34% (2022), 2.96% (2021), 3.11% (2020)
15 Year Fixed Mortgage	As of 10-19-23 6.92%, up 0.69% over the prior year. Annual Average 4.58% (2022), 2.27% (2021), 2.61% (2020)
Brent Crude Oil Price	\$90.95 per barrel (as of October 23, 2023, at 11:00 a.m.) \$145.61 per barrel all time high July 2008 \$2.23 per barrel all time low May 1970
Privately Owned New Housing Building Permits	4.4% below revised August rate 7.2% below September 2022 rate
Privately Owned New Housing Starts	7.0% above revised August rate (+/-15.8%) 7.2% below September 2022 rate (+/-12.1%)
GDP	Q3 2023 (Adv) +4.9% Q2 2023 (3 rd) +2.1%
DJIA	33,142.13 as of October 23, 2023 (11:00 a.m.) 33,730.79 as of September 28, 2023 (12:00 p.m.) 34,721.91 as of August 31, 2023 (close)

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

The Dumb Zone Podcast Hosts Settle Case Involving Non-Competes

The names Dan McDowell and Jake Kemp probably do not ring a bell for most people. However, for a few months over the summer, the two podcast hosts became the faces of the ever-changing landscape involving non-compete employment agreements. McDowell and Kemp previously worked for AM 1310 The Ticket in the Dallas/Ft. Worth market. The pair had been co-hosts on a show on The Ticket since 2020. However, earlier this summer they left the station amidst a contract dispute with management over their salary along with the salary of their junior employees on their show.

Not soon after they left the station, they started their own podcast called, “The Dumb Zone”. The Dumb

Zone required a monthly subscription (\$6.90). Soon after it was launched it had 5,000 subscribers. A few weeks after the podcast launched, Susquehanna Radio and its owner, Cumulus Media, sent the two hosts a cease-and-desist letter. The pair did not cease or desist from continuing with their podcast and their former employer filed suit against the two, claiming their podcast was nearly identical to their radio show and their hosting of the podcast violated their non-compete clauses. The hosts countered that their podcast was behind a paywall (as opposed to over the air) and was released at varying times of the day (as opposed to a set time), among other differences, they were not violating the terms of their non-competition agreement.

The radio station filed for a Preliminary Injunction and a Temporary Restraining Order and on September 22, 2023, the judge in the case denied the radio station's motion for the TRO finding the radio station, "failed to carry the burden of persuasion" on at least one of the requirements for each claim in which they were seeking injunctive relief. Less than a week after the TRO was denied, the parties settled the case (terms have not been disclosed).

What makes this case unique is it came only a few months after the NLRB General Counsel, Jennifer Abruzzo, filed a memorandum in which she indicated non-compete clauses violate the NLRA Section 8(a)(1). GC Abruzzo's memo squarely set non-competes in the Board's crosshairs. In addition to the NLRB looking at changing how non-competes are used, the FTC is expected to issue a rule on non-competes in the coming months. While Kemp and McDowell did not file a claim at the NLRB, Abruzzo's memo coupled with the notoriety of the pairs case brings the issue of non-competes back into the forefront of the public.

It is estimated that roughly 18% of the workforce is governed by non-compete clauses in employment agreements. Many legal scholars pointed to the case of Kemp and McDowell this past summer as a case that likely would have tested the bounds of their lawfulness. Employers should be aware that the NLRB is on the lookout for cases such as these. Additionally, they should review their employment agreements they currently maintain to get ahead of the situation should a landmark case come about quickly.

NLRB Adopts New Joint Employer Rule

On Thursday, October 26, 2023, the NLRB announced it had issued a final rule for determining when a joint employer relationship exists. The new final rule replaces the old rule which was issued under the previous Board in 2020. Initial comment periods for the rule issued last week began on September 6, 2022, and ended on December 7, 2022. During the comment period, the Board received 13,000 comments on the proposed rule. The effective date of the new rule will be December 26, 2023, and the standard will apply only to cases filed after that effective date.

According to the NLRB's website, under the new standard, an entity may be considered a joint employer of a group of employees if each entity has an employment relationship with the employees and they share or codetermine one or more of the employees' essential terms and conditions of employment. The NLRB's website listed the following areas as being considered essential: (1) wages, benefits, and other compensation; (2) hours of work and scheduling; (3) the assignment of duties to be performed; (4) the supervision of the performance of duties; (5) work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline; (6) the tenure of employment, including hiring and discharge; and (7) working conditions related to the safety and health of employees.

Under the old standard, a joint employer relationship was harder to prove as both entities were required to "possess and exercise substantial direct and immediate control" of the employees. The new standard

is much more employee friendly continuing the trend of this Board's reversal of prior Board's rules and regulations. The vote promulgating the new rule was 3 to 1. The new rule broadens the definition of what an employer is and as such employers may find themselves ensconced in bargaining obligations, subject to liability for unfair labor practices, enmeshed in union election campaigns/petitions. The new rule can be found by clicking [here](#).

UPCOMING SEMINARS/EVENTS

CAGC CONSTRUCTORS CONNECT

JOIN THE CAGC AT ITS PREEMINENT EVENT. KEVIN WARREN, PRESIDENT, AND CEO OF THE CHICAGO BEARS IS THE FEATURED SPEAKER.

DATE: THURSDAY NOVEMBER 16, 2023
TIME: 3:30 P.M. TO 6:30 P.M.
LOCATION: SCHAUMBURG RENAISSANCE HOTEL
1551 N. THOREAU
SCHAUMBURG, IL 60173
COST: \$175.00 MEMBERS/ \$225.00 NON-MEMBERS
CONTACT: STACEY KELLY @ 773-444-0465 OR REGISTER BY CLICKING [HERE](#).

UCA HOLIDAY PARTY

JOIN THE UCA AS THEY CELEBRATE THE UPCOMING HOLIDAY SEASON, CASINO STYLE!

DATE: FRIDAY NOVEMBER 17, 2023
TIME: 3:30 P.M. TO 6:30 P.M.
LOCATION: THE EMPRESS
200 E. LAKE ST.
ADDISON, IL 60101
COST: \$190.00 PER PERSON
CONTACT: UCA STAFF 630-467-1919 OR REGISTER BY CLICKING [HERE](#).

MARBA COLLECTIVE BARGAINING SEMINAR

MARBA WILL BE HOSTING AN ALL DAY COLLECTIVE BARGAINING SEMINAR

DATE: WEDNESDAY, NOVEMBER 15, 2023
TIME: 7:30 A.M. TO 5:00 P.M.
LOCATION: MAGGIANO'S OAKBROOK
240 OAKBROOK CENTER
OAKBROOK, IL 60523
COST: COMPLIMENTARY BUT REGISTRATION REQUIRED
CONTACT: REGISTER BY CLICKING [HERE](#) OR CONTACT AJANIK@MARBA.ORG

CALENDAR

NOVEMBER 1	12:00 P.M.	LERA EVENT (ONLINE)
NOVEMBER 7	10:30 A.M.	LABORERS JGC (BURR RIDGE)
NOVEMBER 9	8:00 A.M.	BAC PENSION AND HEALTH & WELFARE MEETINGS (ELMHURST)
NOVEMBER 14	12:00 P.M.	MARBA BOARD MEETING (MARBA)
NOVEMBER 14	5:30 P.M.	IIIFC LEGISLATIVE RECEPTION (COUNTRYSIDE)
NOVEMBER 15	7:30 A.M.	MARBA COLLECTIVE BARGAINING SEMINAR (OAKBROOK)
NOVEMBER 16	3:30 P.M.	CONSTRUCTORS CONNECT (SCHAUMBURG)
NOVEMBER 28	9:00 A.M.	LABORERS JGC (BURR RIDGE)
NOVEMBER 28	11:00 A.M.	UCA ELP PRESENTATION (CHICAGO)
NOVEMBER 30	9:00 A.M.	TEAMSTERS JGC (MARBA)

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?

Shakespeare wrote 154 sonnets and 37 plays. In all his works the month of November is not mentioned a single time.

THE 9U ILLNOIS JR. CELTICS REACH POP WARNER STATE CHAMPIONSHIP!



#34 William Janik stares down his opponent!

SUCCESSION PLANNING FOR CONTRACTORS: FOLLOWING THE LEADER

Succession planning is a strategic process that businesses and organizations use to identify and develop individuals within the "company" who have the potential and desire to fill key leadership positions in the future. The goal of succession planning is to ensure a smooth transition of leadership and critical roles when current leaders retire, leave the company, or are promoted to higher positions. It helps organizations maintain stability and continuity by ensuring that there is a pool of skilled, willing and capable employees ready to step into important roles whenever the need arises.

Construction Industry Associations Host Succession Planning Seminar Thursday, November 16: 8 a.m. – 2 p.m. at the Marriott Delta in Willowbrook, IL

Attention Signatory Contractor Associations: Your members are welcome take part in this dynamic event when the PCA of Greater Chicago and MCA of Chicago in collaboration with other signatory industry associations – ECA Chicago; North Central Illinois NECA; NECA Eastern Illinois; NIFSAB; and SMACNA Greater Chicago – will co-host a seminar on succession planning. See below for registration availability for your association members. This half-day event will focus on key areas of consideration when succession planning is your focus for the future:



Family Dynamics, Retaining Key Staff, and Incentives
Led by John Fisher
– Alera Group



The Legalities of Succession Planning
Led by Jason Loebach, Partner
– Chitkowski Law Office



Contractor Panel
Comprised of leaders from association-member industry contractor companies



Insurance Considerations
Led by Kenny Keil and Nick Nasti
– Federated Insurance



Accounting Best Practices
Led by Paul Lally and Dave Friedman
– WIPFLI



Concludes with an all expert/presenter panel for discussion, advice and Q & A.

Members & Executive Directors from signatory associations not affiliated with ECA; PCA; MCA; NECA; NIFSAB; and SMACNA may attend with advance registration at \$100 per person.

Make checks payable to Coordinating Committee, and send to PCA of Greater Chicago, 603 Rogers Street, Suite 2, Downers Grove, IL 60515.

To learn more please contact S.J. Peters at the PCA at sjp@pcaofchicago.com or 312-563-9526.

Seminar registration deadline is 11/14/23. Cancellations received after this date will not be eligible for a refund.

Register today by emailing adriana@pcaofchicago.com

