

MARBA MATTERS

GRIEVANCES AND ARBITRATIONSⁱ

Mid-America Regional Council of Carpenters Arbitration Demands

MARBA has received one (1) arbitration demand since the last MARBA Matters was published. The demand alleged an employer violated Article X (Stewards) of the CBA.

Laborers Joint Grievance Committee

The Laborers JGC did not meet in October. The next regularly scheduled JGC will take place on November 29, 2022, at the Laborers Burr Ridge office, provided there are any grievances set to go forward.

Operating Engineers Joint Grievance Committee

The Operating Engineers JGC met on October 5, 2022, at the Operators offices in Countryside to hear twelve (12) grievances. The first two (2) grievances were filed against the same contractor both alleging the company was using non-bargaining unit members to operate pieces of equipment covered under the 150 CBA. The Employer failed to appear in front of the JGC. The Union presented its case after which the JGC issued an award in favor of the Union. The next five (5) grievances were filed against the same contractor. The grievances all alleged the company was using non-bargaining unit members to operate skidsteers (including skidsteers with pencil breakers). The Union and Employer settled all five (5) grievances during the hearing. The next five (5) grievances were filed against the same contractor. The five (5) grievances all alleged the company was using non-bargaining unit members to operate various pieces of equipment covered under the 150 CBA. The Employer failed to appear in front of the JGC. The Union presented its case after which the JGC issued an award in favor of the Union. The next regularly scheduled JGC is to be held on December 7, 2022, at Operators Countryside office. There are currently eight (8) on the docket (six (6) are filed against the same contractor).

Teamsters Joint Grievance Committee

The Teamsters JGC did not meet in October. The next regularly scheduled JGC would need to be rescheduled due to Thanksgiving provided there are any cases set to go forward. The hearing would take place at the Teamsters office in Burr Ridge.

COLLECTIVE BARGAINING/LABOR ISSUES***Election Day November 8***

The general election is set for Tuesday, November 8. This is a state holiday in which many state buildings and facilities are closed. The Laborers agreements contain language in them about time off for voting. Please click [here](#) for a memorandum highlighting the language in each of the Laborers CBAs.

INDUSTRY NEWS***PBGC Issues New Proposed Withdrawal Liability Rules***

Earlier this month, the Pension Benefit Guaranty Corporation issued a set of new proposed rules relating to withdrawal liability. The proposed rule is in response to some recent court decisions which called into question the validity of using an interest rate assumption to determine withdrawal liability which was not based on anticipated investment returns. Using an interest rate assumption may lead to the fund collecting a lower amount of withdrawal liability from an exiting contributor which leads to the remaining contributors potentially owing more.

There are currently two ways under ERISA in which an employer may be assessed withdrawal liability (which is the allocable share of plan's unfunded vested benefits): 1) Reasonable actuarial assumptions and methods, reflecting the experience of the plan and reasonable expectations, which, in combination, offer the actuary's best estimate of experience under the plan; or 2) Actuarial assumptions and methods as set forth in PBGC regulations. At this point, the PBGC has never issued regulations about the actuarial assumptions and methods.

The proposed rule calls for a range of acceptable interest rates from the PBGC annuity rate to the rate selected by the plan's actuary for ERISA minimum funding purpose. The PBGC is calling for comments on the proposed rule by November 14, 2022. To view the proposed rule and to make comments on it click [here](#).

White House Looks to Speed Up IIJA Projects

November 15, 2022 will mark the one year anniversary of the passage of the Infrastructure Investment and Jobs Act. The \$1.2 trillion dollar Act was one of the more significant, if not the most significant, pieces of legislation that focused on infrastructure in the nation's history. Despite the significance of the legislation, only \$180 billion dollars have been announced or distributed thus far.

Mitch Landrieu, the White House Director of Infrastructure Implementation held a press conference in which he reiterated the federal government's role in distributing the money but noted that over 90% of the IJA funds will be distributed to non-Federal agencies (i.e., state and local governments) and that they need to also find ways to speed up the process to ensure the funds are spent quickly. To that end, several private entities, including the American Road and Transportation Builders Association (ARTBA), have committed to working with the federal government to streamline the process whereby projects are funded. A press release from the White House regarding the IJA can be found by clicking [here](#).

STATE OF THE ECONOMY

Economic Indicators

Unemployment Rate	September U.S. 3.5% (August 3.7%) Illinois 4.5% (50 th)
Labor Participation Rate	September 2022 = 62.3%, August 2022 = 62.4%
CPI All Urban Consumers	September 2022 over September 2021 = 8.20% Half 2022 over Half 2021 = 8.30%
CPI Chicago All Items	September 2022 over September 2021 = 8.71% Half 2022 over Half 2021 = 7.72%
CPI Midwest All Items	September 2022 over September 2021 = 8.15% Half 2022 over Half 2021 = 8.50%
Union Membership	2021 10.3% (Private Sector 6.1%), 2020 = 10.8% 2021 Rate of Unionized Construction Workers = 12.6% 12.7% (2020), 13.6% (2019), 13.8% (2018)
30 Year Fixed Mortgage	September 6.70%, up 1.48% (August 5.22%) Annual Average 2.96% (2021), 3.11% (2020)
15 Year Fixed Mortgage	September 5.96%, up 1.40% (August 4.56%) Annual Average 2.27% (2021), 2.61% (2020)
Brent Crude Oil	\$91.88 (as of October 25, 2022, at 12:03 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	1.4% above August rate revised July rate 3.2%% below September 2021 rate
Privately Owned New Housing Starts	8.1% below revised August rate (+/-14.9%) 7.7% below September 2021 rate (+/-11.5%)

GDP	Q3 2022 (Adv)+2.6%
	Q2 2022 (2 nd) -0.6%
	Q1 2022 (3 rd Reading) -1.6%
DJIA	32,862.66 as of October 28, 2022 (4 p.m.)
	29,235.10 as of September 29, 2022 (4 p.m.)
	32,202.70 as of August 29, 2022 (4 p.m.)

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

Union Dues to Remain Part of Status Quo Under Recent NLRB Ruling

In a case originating out of the 9th Circuit, the NLRB ruled that employers do not have the unilateral right to stop dues deductions after the expiration of a collective bargaining agreement. The NLRB first weighed in on the issues of dues deductions in 1962 in a case known as *Bethlehem Steel*. In the *Bethlehem Steel* case, the NLRB held an employer could stop dues deductions after a collective bargaining agreement expired. That decision was later called into question by the 9th Circuit and in 2015, the NLRB ruled in the case of *Lincoln Lutheran* that dues deductions were subject to the general statutory requirement that the parties had to maintain the status quo as they bargained for a successor agreement, meaning employers had to continue dues deductions after a collective bargaining agreement expired.

In 2019, the NLRB, under the Trump Administration, issued a ruling in *Valley Hospital I*, in which they again held that employers were free to stop dues collections upon the expiration of a collective bargaining agreement. Once again, the 9th Circuit called into question the NLRB's decision-making processing finding their rationale for their decision in *Valley Hospital I*, to be insufficient. On remand from the 9th Circuit, the current Board once again ruled that employers may not unilaterally stop dues deductions/collections upon the expiration of a collective bargaining agreement. Thus, they need to continue the dues deduction process as part of the status quo.

According to a statement made by Chairman Lauren McFerran posted on the NLRB website, “[p]rior Boards have never cogently explained why dues checkoff should not be part of the status quo that employers must maintain when a contract expires, and courts have struggled with this inconsistency in Board law. Today the Board definitively resolves this issue by confirming that it is a violation of the Act to unilaterally stop dues checkoff when a contract expires”.

The recent uptick in this area of labor law will undoubtedly continue as recent administrations have gone back and forth on a variety of issues including the joint-employer rule, employee handbooks, and remedies.

The most recent case involving union dues, *Valley Hospital Medical Center, Inc. d/b/a Valley Medical Center and Local Joint Executive Board of Las Vegas 28-CA-213783* can be found by clicking [here](#).

UPCOMING SEMINARS/EVENTS

UCA to Host Casino Night/Holiday Party

Join the UCA Membership and their Guests as they look to test their luck at the UCA Casino Night

Date: Saturday, November 19, 2022
 Time: 6:00 p.m. to 10:00 p.m.
 Location: Bolingbrook Golf Club
 2001 Rodeo Drive
 Bolingbrook, IL 60490
 Cost: \$175.00 sponsorships available
 Contact: lauren@uca.org or register by clicking [here](#).

Constructors Connect to be Held at City Hall Events

The CAGC will Host an afternoon/evening of networking and a discussion panel highlighting relevant industry topics.

Date: Wednesday, November 16, 2022
 Time: 3:00 p.m. Registration/Check In, 4:15 p.m. Panel, 5:30 Networking
 Location: City Hall Events
 838 W. Kinzie St.
 Chicago, IL 60642
 Cost: \$175 members, \$225 non-members
 Contact: info@chicagolandagc.org or click [here](#) for tickets

CALENDAR

NOVEMBER 8	12:00 P.M.	MARBA BOARD MEETING (DES PLAINES)
NOVEMBER 10	8:00 A.M.	BAC FUNDS MEETINGS (ELMHURST)
NOVEMBER 11	7:30 A.M.	CONSTRUCTION INDUSTRY FORUM (DES PLAINES)
NOVEMBER 16	3:30 P.M.	CONSTRUCTORS CONNECT (CHICAGO)
NOVEMBER 22	11:00 A.M.	UCA EMERGING LEADERS PROGRAM (CHICAGO)
NOVEMBER 29	9:00 A.M.	LABORERS JGC (BURR RIDGE)
TBD	9:00 A.M.	TEAMSTERS JGC (BURR RIDGE)

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?

November was the ninth month in the Roman calendar. The word novem in Latin means nine.



MARBA WILL BE CLOSED ON THURSDAY NOVEMBER 24 AND FRIDAY NOVEMBER 25 IN OBSERVANCE OF THE THANKSGIVING HOLIDAY. WE WILL REOPEN ON MONDAY, NOVEMBER 28.