MARBA MATTERS

August 31, 2020

MID-AMERICA REGIONAL BARGAINING ASSOCIATION

Serving the Construction Industry Since 1971

Grievances and Arbitrations[i]

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 August. The next regularly scheduled meeting is set for September 29, 2020, at the Laborers Burr Ridge office beginning at 9:00 a.m.

Operating Engineers Joint Grievance Committee

The Operating Engineers Joint Grievance Committee met on August 12, 2020 at the Operators office in Countryside to hear thirteen (13) grievances. The day before the hearings three (3) grievances were settled and one (1) grievance was continued pending settlement discussions. That left nine (9) grievances to be disposed of. The first four (4) grievances were filed against the same contractor. The Union alleged the contractor was using non-bargaining unit members to perform bargaining unit work. The Contractor countered that he terminated his contract with the union and was under no obligation to use bargaining unit members. Prior to voting the Union withdrew one of the grievances against that contrctor leaving three remaining grievances to be decided. The JGC was unable to reach a majority decision resulting in a deadlock. The Union retains the right to pursue the matter through the arbitration process in the CBA.

The next two (2) grievances were filed against the same company. They both alleged the contractor was using non-bargaining unit members to perform work. The Contractor did not appear, and the Union presented its case. The JGC issued a decision in favor of the Union based on the testimony and evidence presented by the Union. The next grievance was filed against a contractor that was allegedly using non-bargaining unit employees to perform bargaining unit work while being signatory to the CBA. The parties reached a tentative settlement during the hearing.

The next grievance was filed against a contractor alleging a violation of the subcontracting provision of the CBA relative to the assembly/disassembly of a crane. The contractor alleged the matter was jurisdictional and should not be heard by the JGC. The JGC was unable to reach a majority decision and the matter was deadlocked. The Union retains the right to pursue the matter through the grievance and arbitration provision of the CBA. The last grievance involved an allegation that a contractor was not providing a safe jobsite by allowing non-150 tradespeople to linger around the jobsite and make disparaging comments to 150 members. The parties reached a settlement during the hearing. The next meeting is scheduled for September 16, 2020. There are currently twelve (12) grievances on the docket.

Teamsters Joint Grievance Committee

The Teamsters Joint Grievance Committee did not meet in August. The next regularly scheduled grievance committee hearing is scheduled for September 24, 2020, at the Local 731 Union hall. There is currently one grievance on the docket.

Collective Bargaining/Labor Issues

Technical Engineers Agreement Posted to MARBA Website

The collective bargaining agreement between MARBA and Local 130 Technical Engineers is posted on the MARBA website. The Bricklayers agreement is not yet posted. All other current CBAs can be found on the website or by clicking here.

Industry News

Illinois Department of Labor Certified Payroll Required September 1

Beginning on September 1, 2020, the Illinois Department of Labor will require contractors to submit their certified payroll transcript via the Department's portal. In order to access the portal contractors will need to create an Illinois Public ID Account. Submitting this data to the Department via the portal may represent a change in the way contractors previously submitted this information. To that end the Department has uploaded several training tools on their website to assist contractors with this process. That information can be accessed by clicking here.

DOL Releases New Guidance on FFCRA

With many K-12 schools in Illinois, and throughout the country, returning to school via online (remote/e-learning) the DOL has recently updated some of its guidance relative to the Families First Coronavirus Response Act. The guidance specifically deals with leave availability due to schools choosing to go remote (FAQs 98-100). The guidance can be found by clicking here.

State of the Economy

Economic Indicators

Unemployment Rate	July 2020 U.S. 10.2%, Illinois 11.3% (41st)
Labor Participation Rate	July 2020 = 61.4%, June 2020 = 61.5%
CPI (All Urban Consumers)	July 2020 versus July 2019 = 0.98% Half 2020 = 1.24%
CPI Chicago All Items	July 2020 versus July 2019 = 1.02% Half 2020 = 1.23%
CPI Midwest All Items	July 2020 versus July 2019 = 0.70% 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	July 3.02%, down 0.14% from June 3.16% Annual Average 2019 = 3.94%, 2018 = 4.54%
15 Year Fixed Mortgage	July 2.52%, down 0.08% from June 2.60% Annual Average 2019 = 3.39%, 2018= 4.00%
WTI Crude Oil Price	$ 42.95 per barrel (as of August 28, 2020m 11:40 CST) $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	18.8% above revised June rate (+/-1.1%) 9.4% above July 2019 rate (+/- 1.5%)
Housing Completions	3.6% above revised June rate (+/-14.9%)* 1.7% above July 2019 rate (+/- 12.8%)
Privately Owned New Housing Starts	22.6.3% above revised June rate (+/-14.7%) 23.4% above July 2019 rate (+/- 12.4%)*
DJIA	28,574.55 as of August 28, 2020 (12:47 p.m.) 26,313.65 as of July 30, 2020 (close)

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

Offensive Conduct Standards Reviewed by NLRB

The NLRB recently issue a decision in which it reviewed the standards under which an employer can discipline employees for engaging in offensive conduct while at work. The decision, issued on July 21, 2020, involved a GM employee who represented bargaining unit members full time while employed for the company. On three separate occasions the employee engaged in conduct that can be described as offensive or abusive. The conduct in question was directed toward the employee's supervisors when discussing work related matters including compensation, overtime, and manpower. The conduct in question had profane language, threats of physical violence, and undertook racial stereotypes. After each of the three separate incidents the employer suspended the employee. An ALJ found the employee retained Section 7 protection during only one of the "outbursts" and held the Employer violated Section 8(a)(3) and (1) of the NLRA in suspending him for his conduct during the other outburst.[1]

The Employer filed exceptions to the ALJs decision, and the NLRB asked the parties and interested amici to address several questions. The questions included, "under what circumstances should profane language or sexually or racially offensive speech lose protection of the Act?", "to what extent should employees be granted some leeway with respect to profanity or language that is offensive to others on the basis of race or sex?", "should the Board continue to consider workplace norms and if so what about employer work rules that go against those norms?", "should the Board modify its standard under other

[1] Section 7 of the National Labor Relations Act (the Act) guarantees employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities."

cases with respect to profane or sexually explicit language on the picket line?", and lastly, "what relevance does the Board need to accord anti-discrimination laws in determining whether an employee's statements lose the protection of the Act."

Unsurprisingly, several amici filed briefs on both sides of the issue. Some wanted the Board to adhere to current standards with respect to the questions the Board posed, and some wanted the Board to treat abusive conduct in a different manner. The Board reviewed the applicable standards for abusive conduct and determined it must consider a different standard for deciding cases where employees engage in abusive conduct in connection with Section 7 activity and the Employer asserts it discipline the employee because of that conduct. The Board returned to its standard previously articulated under the *Wright Line* case. Under *Wright Line* the Board's GC must show that the employee engaged in Section 7 activity, the employer knew about the activity, and the Employer had an animus against that activity. Once the GC has proven this the employer will be found to have violated the Act unless it can show it would have taken the same action in the absence of the Section 7 activity. The Board found the application under the *Wright Line* standard to these types of future cases will be "more reliable and less arbitrary". It further held the *Wright Line* standard will provide more "equitable treatment of abusive conduct". The Board then applied the *Wright Line* standard to all pending cases that involved abusive conduct in connection with Section 7 activity.

The case can be found by clicking here.

New York Federal Court Strikes Down Some Regulations of FFCRA

A federal court in New York recently struck down four provisions of the Families First Coronavirus Response Act (FFCRA). The provisions struck down included 1) the definition of who qualifies for the healthcare provider exemption, 2) the exclusion from benefits of employees whose employers do not have work for them, 3) the requirement that employees secure consent for intermittent leave for certain qualifying reasons and 4) the requirement that documentation be provided before taking leave.

The court found the definition of healthcare provider was "vastly overbroad" and it should not stand. It further held that the Department of Labor's final rule regarding the utilization of Emergency Family and Medical Leave Expansion Act (EFMLEA) and Emergency Paid Sick Leave Act (EPSLA) is "patently deficient". With respect to the intermittent leave, the Court found that obtaining consent from the employer before taking intermittent leave was "entirely unreasonable". Lastly, the requirement that documentation be provided before taking leave was not in line with the intent of the FFCRA and it "cannot stand".

It is unclear on what impact this decision has on employers outside of New York. As such, employers would be mindful to monitor the DOL's next steps as it relates to this case.

The opinion and order may be found by clicking here.

Upcoming Seminars/Events	Calendar
UCA Golf Outing Join the UCA for their annual golf outing (rescheduled from earlier in the year). Date: Wednesday, September 2, 2020 Time: 11:00 a.m. to 8:00 p.m. Location: Cantigny Golf Course 27W270 Mack Rd Wheaton, IL 60189 Cost: $260.00 (Golf) Contact: Lauren at 630-467-1919 or lfosmoen@uca.org	September 8 11:00 a.m. MIAF Meeting (online) September 8 11:00 a.m. MARBA Meeting (online) September 16 8:00 a.m. Operators JGC (Countryside) September 24 8:00 a.m. RCEC Economic Conference (online) September 24 9:00 a.m. Teamsters JGC (Burr Ridge) September 29 9:00 a.m. Laborers JGC (Burr Ridge)
Did You Know:.	

[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.*

LIONS V. BEARS!