

MARBA MATTERS

Serving the Construction Industry Since 1971

August 31, 2019

Grievances and Arbitrationsⁱ

Chicago Regional Council of Carpenters Arbitrations

MARBA received zero arbitration referrals this month.

Laborers Joint Grievance Committee

The Laborers Joint Grievance Committee did not meet in August. The next meeting is scheduled for September 24, 2019, at MARBA.

Operating Engineers Joint Grievance Committee

The Operating Engineers Joint Grievance Committee did not meet in August. The next regularly scheduled JGC was set for September 11, 2019, however, that has been postponed until November 13, 2019, beginning at 8:30 a.m. at the MARBA office. There is currently one grievance to be heard.

Teamsters Joint Grievance Committee

The Teamsters Joint Grievance Committee did not meet in August. The next meeting is scheduled for September 26, 2019, at a location to be determined.

Collective Bargaining/Labor Issues

Construction Hiring Stays Flat for July

Despite large gains in the construction industry in June hiring remained largely flat in July adding only 4,000 jobs. Year-over-year the employment numbers are up 2.8% (July 2018 to July 2019). However, the unemployment rate for July 2019 is up 0.4% at 3.8% compared to July 2018, 3.4%. There was a slight uptick in hiring with specialty trade contractors. However, those gains were wiped out by a decline in hiring with civil and heavy engineering contractors

Industry News

NLRB Seeks to Change Pre-Hire Relationship Rules

Continuing with its robust agenda this year on August 12, 2019, the NLRB issued a notice of proposed rulemaking (NPRM) aimed at three union representation issues. All of the proposed rule changes have the potential to impact the construction industry, perhaps none more than the rule dealing with the type of CBA an employer and union

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Labor Participation Rate	July 2019 = 63.0%, June 2019 = 62.9%
CPI (All Urban Consumers)	July 2019 versus July 2018 = 1.81% Half Year 2019 = 0.93%
CPI Chicago All Items	July 2019 versus July 2018 = 1.54% Half Year 2019 = 1.11%
CPI Midwest All Items	July 2019 versus July 2018 = 1.45% Half Year 2019 = 1.30%
Union Membership	2018 = 10.5% (Private Sector 6.4%), 2017 = 10.7% Construction = 13.8% (2018), 14.0% (2017)
30 Year Fixed Mortgage	July 3.77% down 0.03% from June 3.80%
15 Year Fixed Mortgage	July 3.20% down 0.04% from June 3.24%
Brent Crude Oil Price	\$ 60.43 per barrel as of close August 30, 2019) \$ 145.61 per barrel all time high July 2008 \$ 2.23 per barrel all time low May 1970
Privately Owned New Housing Building Permits	8.4% above revised June rate (+/-1.1%) 1.5% above July 2018 rate (+/-1.4%)
Privately Owned New Housing Starts	4.0% below revised June rate (+/-8.0%) 0.6% above July 2019 rate (+/-8.2%)
New Home Sales	7.2% above revised June rate (+/-11.4%) 6.3% above the July 2018 rate (+/- 12.0%)
GDP	2.1% 2 nd Quarter 2019 (Advance Estimate) 3.1% 1 st Quarter 2019
DJIA	26,403.28 as of August 30, 2019 (close)
All Time High	27,398.68 as of July 16, 2019 (intraday)

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

Employer Owes No Withdrawal Liability But May Owe An Exit Fee

In a case worth following, the 4th Circuit Court of Appeals recently vacated a judgment and remanded the case back to the District Court for further proceedings. The case

stemmed from an employer being charged an “exit fee” by the pension fund after the conclusion of the CBA it was signatory to with a Sheet Metal union.

The employer was signatory to an agreement with a local union. The employer utilized a national trade association to represent it in negotiations with the local. The CBA reached between the national association and the local union contained language in it that obligated the employer to make contributions to the pension fund and incorporated by reference the pension fund trust documents. The CBA also required the employer to bound to any amendments to the trust documents during the term of the agreement.

The trust document, in turn, contained language in it that required employers to pay an exit fee when three criteria were met: 1) it ceased to have an obligation to contribute to the Fund; and 2) as a result of its cessation of its obligation to contribute it had an event of withdrawal under ERISA (Title IV); but 3) did not have to pay a statutorily mandated withdrawal liability. The trust document was amended during the term of the CBA which stated the employer’s obligation to pay an exit fee was independent of the CBA and would continue to apply after the termination of the CBA.

The CBA expired and the employer did not sign onto a new CBA, but it continued to do work in the jurisdiction of the union. As such, it triggered a withdrawal event (i.e. withdrawal liability). The Employer was not required to pay the withdrawal liability as it was reduced under ERISA’s *de minimis* rule. The fund subsequently sent a demand letter to the employer claiming the employer owed \$97,601.01. This was the amount the fund characterized as an exit fee. The employer refused to pay, and the fund filed a suit under ERISA § 515.

The District Court held the employer was not obligated to pay the exit fee holding the obligation to pay the fee did not survive the expiration of the CBA. The 4th Circuit held the plain language of both the CBA (pre-amendment) and the Trust Fund document itself both imposed an obligation to pay an exit fee. Thus, the 4th Circuit reversed the decision in favor of the employer dismissing the complaint and vacating the judgment with respect to the exit fee.

The case can be found here: <https://tinyurl.com/y4lp4gp6>

Upcoming Seminars/Events

UCA Annual Business Meeting

Join the UCA for the Annual Business Meeting. Speakers include Director of the Illinois Department of Labor Michael Kleinik and Benjamin Brockschmidt from Illinois Water

Date: Tuesday, September 12, 2019
 Time: 4:30 p.m. to 8:00 p.m.
 Location: Venuti’s Italian Restaurant
 2251 W. Lake Street

Addison, IL 60101
 Cost: \$135 per person before 9-6-19/\$165 per person after 9-6-19
 Contact: lfosmoen@uca.org or 630-467-1919

GLCA Safety Day 2019

Join the GLCA for a half day seminar or safety including an active shooter presentation as well as an update on the legalization of adult use recreational cannabis.

Date: Tuesday October 1, 2019
 Time: 8:00 a.m. to 12:00 p.m. (registration open at 7:00 a.m.)
 Location: Abbot, J46 Cafe
 1850 Norman Dr. N.
 Waukegan, IL 60085
 Cost: Complimentary – Breakfast and Lunch included
 Contact: Lorraine at events@greatlakesca.org or (847) 623-2345

Calendar

September 9	9:00 a.m.	CISCO Golf Outing (Bloomington)
September 10	11:00 a.m.	MIAF (MARBA)
September 10	12:00 p.m.	MARBA Board Meeting (MARBA)
September 12	6:00 p.m.	IIFFC Anniversary (Chicago)
September 17	11:00 a.m.	Road Builders Golf Outing (Lemont)
September 24	9:00 a.m.	Laborers JGC (MARBA)
September 26	9:00 a.m.	Teamsters JGC (TBD)

Did You Know: September 1 is known as Random Act of Kindness Day

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.

