

# MARBA MATTERS

December 29, 2017

Serving the Construction Industry Since 1971

## Grievances and Arbitrations<sup>1</sup>

### Chicago Regional Council of Carpenters Arbitrations

MARBA received no arbitration referrals this month.

### Laborers Joint Grievance Committee

The Laborers Joint Grievance Committee did not meet in December due to the Christmas and New Year holidays. Because of the holidays, the next JGC meeting is scheduled for January 5, 2018, at 9:00 a.m. at the Laborers Burr Ridge office.

### Operating Engineers Joint Grievance Committee

The next meeting of the Operating Engineers JGC was scheduled for January 10, 2018. However, on advice from the Union that meeting was canceled. The next meeting will be on March 14, 2018, beginning at 8:30 a.m., at the MARBA offices. There are currently three (3) grievances scheduled to be heard.

### Teamsters Joint Grievance Committee

There was no meeting in December. The next meeting is scheduled for January 25, 2018, at a location to be determined.

## Collective Bargaining/Labor Issues

### 2018 Expiring Contracts

The collective bargaining agreement between MARBA and the International Association of Machinists and Aerospace Workers, AFL-CIO Local 701 (Auto Mechanics) is set to expire on May 31, 2018. This is the only agreement that MABA negotiates and administers that is set to expire in 2018. Other non-MARBA contracts that are set to expire will be disseminated through the Negotiation Updates email distribution list that will go out in late March/early April.

## Industry News

### Chicago Area Projected for Construction Slowdown

According to the construction forecasting group, Dodge Data & Analytics, the Chicago area is expected to see a dip in construction starts to the tune of three percent (3%) next

year. The residential market, especially in Chicago proper, is projected to see an eleven percent (11%) decrease in spending to \$6.5 billion. The downturn comes after six (6) years of increases. Despite the downturn 2017 saw a record number of tower cranes in the city, with 53 operating as of August.

### **Will County to Request Tollway Feasibility Study**

The Will County Executive Committee plans to request the Illinois Tollway conduct a feasibility study regarding widening the portion of interstate 80 that runs through Will County by adding a dedicated tollway lane. The news release issued by the Executive Committee recently indicated Will County officials are concerned about lost economic productivity in addition to safety concerns in that area of the county.

The Will County area has seen a rapid rise in the development of warehouses (i.e Amazon, Ikea, etc.) within the I-80/I-55/I-355 corridor. This has caused an increase in traffic especially near the Joliet area. A new development in that same region, the Compass Business Park, is in the planning process. This project, estimated to be 2,200 acres and cost \$1.3 billion would require new infrastructure (roads, bridges, etc.). Many in the area are opposed to this project due to infrastructure concerns as expressed by the County Executive Committee.

### **New Proposed Rules Involving Multi-Employer Pension Plans**

The Trump Administration is set to issue a proposed rule early in 2018 that updates the PBGC's formula for setting interest rates and mortality assumptions. It also plans to issue a proposed rule which would simplify the calculation of an employer's withdrawal liability when it exits a multi-employer pension fund. A link to the agenda where the proposed rules can be found here: <http://goo.gl/nSPJPT>

## **State of the Economy**

### **Economic Indicators**

Much of the data typically covered in this section was not available at time of publication. This section will be updated in the January 2018 MARBA Matters.

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

### **NLRB Reverses Course on Joint Employer Standard**

In a move that was not completely surprising, the NLRB issued a decision recently in which it reversed course on the joint employer standard established under the *Browning-Ferris* decision issued in August 2015. The Board, in the most recent decision, re-established the joint employer standard in existence until *Browning-Ferris* was decided.

Although the Board found the two employers in the instant case were joint employers, they ruled the ALJ decision using the *Browning-Ferris* standard was improper. In their decision, the majority stated, “[w]e return today to a standard that has served labor law and collective bargaining well, a standard that is understandable and rooted in the real world”. The decision went onto hold, “a finding of joint-employer status requires proof that the alleged joint-employer entities have actually *exercised* joint control over essential employment terms (rather than merely having "reserved" the right to exercise control), the control must be "direct and immediate" (rather than indirect), and joint-employer status will not result from control that is "limited and routine."

The decision was 3-2 with Chairman Miscimarra, Member Emanuel, and Member Kaplan voting in favor to return to the “old” standard. Member McFerran and Member Pearce dissented. A full copy of the decision can be found here: <https://goo.gl/R4VFWB>

### **Ohio Court Rules Contractor Not Liable for \$5 Million Pension Liability**

An Appeals Court in Ohio ruled that a contractor is not liable for \$5.1 million dollars in pension liability to the Iron Workers Local 17 Pension Fund. The court ruled the work claimed by the Union was not within the jurisdiction of the previous collective bargaining agreement. The Fund had previously been ruled against by both an arbitrator and the District Court finding the Fund had improperly assessed the liability against the contractor.

In upholding both decisions, the Appeals Court found the work (power rigging) was not within the jurisdiction of the CBA because it allowed the contractor to assign such work to other trades. The Court followed decisions by other circuits which hold that a contractor’s withdrawal liability is limited to jurisdictional language of the CBA.

An interesting note to this case is the Fund at issue is underfunded by roughly \$170 million dollars and has close to 2000 participants. The Fund was the first to be granted approval by the Department of Treasury to cut benefits and participants recently voted to institute reductions to benefits to stave off insolvency.

The full text of the decision can be found here: <https://goo.gl/NK6JPt>

### **Upcoming Seminars/Events**

#### **The Illinois Construction Industry Legal Power Seminar-Third Annual**

Smith Amundsen will present a complimentary, half-day, seminar covering various legal aspects as they relate to the construction industry (HRCI and CLE Pending).

Date: Wednesday, January 17, 2018  
 Time: 8:30 a.m. to 12:00 p.m.  
 Location: Harry Caray’s, Yorktown Center  
 70 Yorktown Center

Lombard, IL 60148  
 Cost: Complimentary  
 Contact: Emily Wallner [ewallner@salawus.com](mailto:ewallner@salawus.com) or <https://goo.gl/rsknrT> to register

**Changes to AIA Contracts: Q and A**

Join the Chicagoland AGC and members of Ogletree Deakins as they answer your questions about the changes in AIA Contracts.

Date: Wednesday, January 31, 2018  
 Time: 7:30 a.m. to 10:00 a.m.  
 Location: Maggiano's Little Italy  
 240 Oakbrook Center  
 Oakbrook, IL 60523  
 Cost: \$25 for AGC members/\$75 for non-AGC members  
 Contact: Hilary at 773-444-0465 or <https://goo.gl/buZuQk> to register

**Calendar**

|            |           |  |
|------------|-----------|--|
| January 5  | 9:00 a.m. | Laborers Joint Grievance Committee (Burr Ridge Office) |
| January 17 | 8:30 a.m. | Smith Amundsen Construction Seminar (Lombard)          |
| January 25 | 9:00 a.m. | Teamsters Joint Grievance Committee (TBD)              |

Did You Know: Celebrating the New Year dates back almost 4,000 years to ancient Babylonia. The Babylonians celebrated the New Year with the first full moon after the spring equinox.

<sup>i</sup> 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 MARBA office will be closed January 1, 2018, in observance of New Year's Day. Our office will re-open January 2, 2018.