

# MARBA MATTERS

Serving the Construction Industry Since 1971

June 30, 2020

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

### Chicago Regional Council of Carpenters Arbitrations

MARBA received one (1) arbitration request this month regarding an alleged violation of Article XXII (Pile Driving).

### Laborers Joint Grievance Committee

The Laborers Joint Grievance Committee did not meet in June. The next meeting is scheduled for July 28, 2020, at MARBA.

### Operating Engineers Joint Grievance Committee

The next meeting of the Operating Engineers Joint Grievance Committee is scheduled for August 12, 2020, in Countryside.

### Teamsters Joint Grievance Committee

The Teamsters Joint Grievance Committee did not meet in June. The next meeting is scheduled for July 30, 2020, at a location to be determined.

## Collective Bargaining/Labor Issues

### July 4<sup>th</sup> Holiday – Overtime Provisions

The Operating Engineers agreement calls for those Operators working on Friday, July 3, 2020, to receive double time since the July 4<sup>th</sup> holiday falls on Saturday this year. The Carpenters also claim double time on Friday July 3 this is due to an arbitration decision issued in 2009. The Bricklayers recently indicated in an email to the Mason Contractors Association of Greater Chicago (MCAGC) they also would be claiming double time for work performed on Friday July 3.

Holiday provisions for all MARBA agreements can be found by clicking the following link: <https://www.marba.org/resources>

## Industry News

### Facebook Announces \$800 Million Dollar Data Center Project in DeKalb

Facebook recently announced its plans to build an \$800 million dollar data center in southeast DeKalb (IL). Facebook, which already owns the land on which the data center

will be built, can accommodate up to five buildings. It is expected two buildings will be open by 2022. The project is expected to include up to 100 permanent jobs upon completion.

The company and city had been working on the details of the project for months. The company has not applied for the state's data center tax incentive which was enacted in 2019. Under that plan companies that spend \$250 million or above and hire 20 full time employees over five years can qualify for the program. The data center will be one of fifteen that the company owns globally and the first in Illinois.

### **State of the Economy**

#### **Economic Indicators**

Unemployment Rate	May 2020 U.S. 13.3%, Illinois 15.2% (43 <sup>rd</sup> )
Labor Participation Rate	May 2020 = 60.8%, April 2019 = 60.2%
CPI (All Urban Consumers)	May 2020 versus May 2019 = 0.12%
CPI Chicago All Items	May 2020 versus May 2019 = -0.39
CPI Midwest All Items	May 2020 versus May 2019 = 0.37%
Union Membership	2019 = 10.3% (Private Sector 6.2%), 2018 = 10.5%
Rate of Unionized Construction Workers	2019 = 13.6%, 13.8% (2018), 14.0% (2017)
30 Year Fixed Mortgage	May 3.23%, down 0.08% from April 3.31% Annual Average 2019 = 3.94%, 2018 = 4.54%
15 Year Fixed Mortgage	May 2.69%, down 0.11% from April 2.80% Annual Average 2019 = 3.39%, 2018= 4.00%
WTI Oil Price	\$ 38.95 per barrel (as of June 29, 2020) \$ 145.61 per barrel all time high July 2008 \$ -40.32 per barrel) all time low March 2020
Privately Owned New Housing Building Permits	14.4% above revised April rate (+/-1.1%) 8.8 % below May 2019 rate (+/-1.0%)
Privately Owned New Housing Starts	4.3% below revised April rate (+/-15.5%) 23.2% below revised May 2019 rate (+/-6.2%)
New Home Sales	16.6% May 2020 (forecasters predicted +2.5%)

GDP	-5.0% 1 <sup>st</sup> Quarter 2020 (3 <sup>rd</sup> Third Estimate)
DJIA	25,421.64 as of June 29, 2019 (mid-day) 25,383.11 as of May 29, 2020 (close)

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

**NLRB Holds Confidentiality Provision is Lawful in Arbitration Agreement**

The NLRB recently issued a decision in a case involving a confidentiality provision within an employer's arbitration agreement that employees were required to sign. The Board held the confidentiality provision was lawful and could be included in the arbitration agreement. The arbitration agreement provision stated, "The arbitration shall be conducted on a confidential basis and there shall be no disclosure of evidence or award/decision beyond the arbitration proceeding".

The case, *California Commerce Club, Inc.* 369 NLRB No. 106 (June 19, 2020), began in 2016, after the NLRB General Counsel (GC) filed an Unfair Labor Practice charge (ULP) against the company claiming the confidentiality provision violated the NLRA (specifically Section 7). The ALJ hearing the case held the provision was unlawful. The employer appealed the ALJ's decision and the Board upheld the decision. The employer again filed an appeal with the U.S. Court of Appeals in the D.C. Circuit.

While that review was pending the Board issued its decision in the *Boeing* case. The *Boeing* case changed the standard for reviewing employer work rules and whether they violate the NLRA. The NLRB held the *Boeing* decision would apply retroactively. As such, the Court of Appeals sent the case back to the NLRB for further proceedings. As the Board's General Counsel changed during the pendency of the *California* case there was a shift in the GC's position as to whether the employer's confidentiality provision in that case was still unlawful.

Once the case was back in front of the NLRB it determined the confidentiality was lawful. However, the NLRB held, "Our determination that the confidentiality provision at issue in this case is lawful under the Act does not mean, however, that any confidentiality provision is lawful merely because it is included in an arbitration agreement." The case does provide a road map for including confidentiality provisions in arbitration agreements. However, those provisions, "that impose confidentiality requirements beyond the scope of the arbitration proceeding and the rules under which the arbitration will be conducted" may be held to be unlawful.

**Upcoming Seminars/Events**

Due to COVID-19 many upcoming in person events and seminars have been postponed. Industry events and seminars will be posted here once they resume.

### Calendar

July 14	12:00 p.m.	MARBA Board Meeting (Online)
July 28	9:00 a.m.	Laborers JGC (Burr Ridge)
July 30	9:00 a.m.	Teamsters JGC (TBD)

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Did You Know: The Sony Walkman was introduced on July 1, 1979 in Japan. Also occurring on July 1 (1980), *O Canada* was officially recognized as the Canadian national anthem. Born on the 4<sup>th</sup> of July (1944) one William J. Janik (Happy Birthday Dad).

<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.

