

Attendees

- Eastern Contractors Association
 - Lauren Reagan (on behalf of Todd Helfrich, Affiliate Executive Director)
- Architectural Glass and Metal Contractors Association
 - Joe Clabbers, President
 - Dick Conly, Affiliate Executive Director
- Madison FCA
 - Shaun Murphy
 - Greg Wolf
 - Mike Molofsky
 - Judy Noyce, Affiliate Executive Director
- New Jersey Glass and Metal Contractors Association
 - Bernie Gingras, Affiliate Executive Director
- Associate of Master Painters and Decorators of Philadelphia
 - Dave Tiedeken, President
 - Wayne Gregory, Affiliate Executive Director
- FCA of Chicago
 - Tom Tyrakowski, President
- FCA Contractors of Southern Louisiana
 - Gareth Reardon, President and Affiliate Executive Director
- FCA of Illinois
 - Brian Scott

Legal Counsel

- Steve Burton

FCA Staff

- Stuart Binstock
- Tony Darkangelo
- Kristin Bromberg

Legal Rights for Information Prior to Negotiations

- For information prior to negotiations, you only have rights to information that is presumptively relevant to your trade.
- Keep in mind the 9(a) vs. 8(f) agreements. 8(f) has no obligation to bargain in once the CBA has expired.
 - Part of the duty to bargain in good faith means supplying information that is presumptively relevant.
- 9(a) agreements **do** have an obligation to negotiate an agreement and to bargain in good faith. You have the right, prior to negotiations, to request information from the union that is presumptively relevant to help you to adequately prepare for bargaining under the National Labor Relations Board (NLRB). Prior to negotiations, you should let the union know that you would like to know the other agreements in your jurisdiction. Make this request in writing, and also include a reasonable time limit to furnish this information.
- Most Favored Nations Provision
 - With this language, if the Union enters into more favored terms and conditions with another employer in the geographical jurisdiction of the union, the contractors with this provision have the right to adopt the more favorable terms and conditions. Note:

Some language requires you to adopt the entire contract and not just the more favorable terms and conditions.

- Not all Most Favored Nations Provisions are put together the same way. Some general distinctions include:
 - Allows contractors to immediately adopt a more favored terms and conditions.
 - If union chooses not to comply with your request for presumptively relevant information, you can file an unfair labor practice with the NLRB.
- It was mentioned that perhaps the local could ask the IUPAT for information. You have to keep in mind, that the local has no bargaining relationship with the IUPAT, and therefore, the IUPAT has no obligation to furnish documents requested from the local level.
- It is acceptable for the management trustees to request copies of all CBAs contributing to the fund. The trust fund trustees should back you up as this is a legitimate request as a trustee.

Leveraging the Filing of an NLRB Charge against Labor

- Whether it is an individual employer, contractor, or association, anyone can file a charge; however, it is most appropriate for the association to file the charge against labor if the association has the bargaining rights of the employers.
- If the union will not comply with the request for information, be sure to get the objection of the union in writing and make multiple requests with certified mail.
- To file a charge, go to your local NLRB. You must file with the intake officer and you must provide a brief statement that states the facts: why you want to file the charge, how it will help, and any previous communications efforts with the union. The intake office will help with the specific wording of the charge. This is a relatively inexpensive process.
 - Remember that there is a timeline involved, which is on average about 1.5-2 months from the initial charge to the resolution.
- There may likely be political fallout as a consequence to filing a charge.
- How to verify the union gave you all of the information that is available?
 - Rely on the union's good graces to provide the information.
 - Cross-reference with the FMCS notice of mediation with local employers in the area.
 - Cross-reference contributing employers in the area.
- Issue of separate DCs under the same local union using different agreements.
 - It is acceptable to us the Most Favored Nations Provision in this situation.

50/50 Out of Jurisdiction Work

- What if you are signatory to more than one agreement, does 50/50 still apply?
 - In the context of a out of jurisdiction clause that says if you go outside the geographic jurisdiction of your local:
 - You must hire 50 percent of the people from the job site local; you have to go by the CBA at the local job site. If you bring people from your home local, you have to provide these people with the higher of the two rates with the difference being paid on their check. If you are not signatory to a CBA at the job site local, or have not signed a memorandum of understanding you may have to work under the terms and conditions of your home CBA based on the language in that CBA.
- You may be viewed as a non-union contractor if you take people off the street from the local job site area.
- If you remove the 50/50 provision, you may limit your ability to travel with people from your home local, but this depends on the contract definitions for a traveling contractor.
- A traveling contractor is defined in a couple different ways:

- A contractor with two locations, or
- A contractor who is signatory to two agreements in two district councils.

Should Management Request the IUPAT Attend Negotiations?

- Contractors or the association can make this request, but don't have the ability to legally make it happen.

Liability in Sharing Top Workplace Performance (TWP) Information with a Third Party

- It should be noted, that if the union does not introduce TWP in negotiations, then contractors should do so.
- There is no generalized right of privacy recognized for workers, but potential defamation has some implications in this setting.
- If you apply TWP as it was intended, this should not be much of an issue.

Can We Get Language Requesting the IMS System in the CBA?

- Putting IMS in at the local level will not have much of an effect. That being said, it would be to be between a contractor and the International Union, and only applies to a contractor who is signatory to a national agreement.
- Another option is to ask that the union include language about their referral system (IMS System), and then request that the union share such information.

The next CBA conference call is scheduled for April 1, 2010.