

COLLECTIVE BARGAINING DATA & DISPUTE RESOLUTION

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NIA | National Insulation
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- Attorney with Management Guidance, LLP – firm represents clients in labor relations matters throughout the United States
- Executive Director for Allied Construction Employers Assn. – Milwaukee, WI
- Executive Director for Millwrights Contractors Assn. – Houston, TX
- Bargain with over a dozen construction/mechanical trade unions
- Previously in-house counsel for nationwide structural steel and glazing design/build firm
- Juris Doctorate: Chicago-Kent College of Law – 2019
- U.S. Air Force 2009-2019



What Is Relevant Data?

- Who is your local “chasing”?
- Other locals for the same trade
- Other trades in your market
 - What other trades work alongside your employees?
 - E.g., Insulators may compare to mechanical trades
 - Is your trade losing/gaining “rank”
 - Applicability of trends for other trades
 - Licensed vs. unlicensed
 - One sector booming out of step with the broader trend
 - One bargaining unit is notoriously weak? One local is notoriously aggressive?

What Is Relevant Data? cont.

- *In the end*, the Union will compare itself to whoever gets them the raise they want.
- Market share
 - Strong niche in an otherwise weak Union area?
 - Losing or gaining hours in that market?
- Inflation
 - Raises have consistently beat it in previous years?

Where to Find Relevant Data?

- **Construction Labor Research Council (CLRC)**
 - National and regional trends going back 10+ years
 - Data in both \$ and % for 16 trades – including Insulators
 - Clear and straight forward – paid publication
- **Bureau of Labor Statistics (BLS)**
 - Wealth of data available
 - Organized down to metro areas, by trade, etc.
 - Does not differentiate union vs. non-union
 - Inflation data back to at least 1913
- **Local trade associations: AGC, PMSMCA, NECA**

Don't Ask the Union to Agree on the Data

- “There are lies, damn lies, and statistics.” – Mark Twain
- Can make negotiations needlessly argumentative/combative
- Remember – even non-union companies give raises, it's not about “beating” the union
- AND even if you're right on the data...



“You deal in numbers and data. I deal with emotions.”



The Human Element in Negotiations

- Labor's current views towards management
- The workers' current views towards union leadership
 - When is the next election?
- What's the usual turnout at Union meetings?
 - What is the union's CBA ratification process?
- How long has it been since your area has seen a work stoppage?
 - Young journey workers may have never seen a significant down market.
 - How many workers know how big an increase is needed to cover a week's lost wages? How many care?

The Human Element in Negotiations, cont.

- Expectations seem to be high everywhere
 - Union organizing HAS seen an uptick – just not necessarily in construction
 - Union workers have seen some big bargaining wins – just not necessarily in construction
 - UAW, UPS, public sector workers
 - Machinists in the Pacific NW maintained strike even when offered 35% over 5 years
 - Social media can exacerbate the problem
 - One or more mega-projects can create a false appearance of a booming market
 - Easier to spread info (rumors?) about other markets
- Public vs. private sector union economic realities

Grievance & Arbitration

Your Collective Bargaining Agreement Controls!



CBA Will Lay Out Your Dispute Resolution Process

Section 8.2 A grievance must be filed in writing by the Contractor, or the Union, within ten (10) days of the date the matter is brought to the attention of either party (copy sent to the respective Association's office).

Section 8.3 All grievances, disputes or complaints of violations of any provisions of this Agreement shall be submitted to final and binding arbitration by an arbitrator from the Federal Mediation and Conciliation Service . . . The arbitrator shall be a construction orientated arbitrator registered with the Federal Mediation and Conciliation Service. The arbitrator shall have sole and exclusive jurisdiction to determine the arbitrability of such dispute as well as the merits thereof. . . The arbitrator shall have the authority to give a bench decision at the close of the hearing, unless he/she shall deem the issues to be unusually complex, and thereafter he/she shall reduce the award to writing

...

Section 8.4 In the event the arbitrator finds a violation of the Agreement, he/she shall have the authority to award backpay to aggrieved person or persons on the referral list in addition to whatever other or further remedy may be appropriate.

Section 24.1. Joint Grievance Board. There is created a Joint Grievance Board for the purpose of settling and adjusting grievances, controversies, and disputes, under or involving the provisions of this Agreement, in accordance with the terms of this Article. The Associations and Union agree to notify one another of any and all grievances brought by any of the parties. Such Joint Grievance Board shall consist three (3) members to be chosen by the Associations and three (3) members to be chosen by the Union within a reasonable time, and no later than ten (10) business days from the date of complaint. The Board shall attempt to adjust the dispute and issue a written decision. The Joint Grievance Board shall meet periodically to discuss grievances.

...

Section 24.3. Arbitration. If the matter cannot be satisfactorily settled or adjusted by such Joint Grievance Board, it shall be referred to arbitration in accordance with the following procedure:

...

(c) The decision or award of a majority of the seven (7) member Board of Arbitration shall be final and binding upon all parties, providing that it is within the authority of the Board. Said Board of Arbitration shall have no authority to change or modify any of the terms or conditions of the Agreement.

Courts VERY Rarely Vacate an Arbitrator Award

- Courts will only vacate if the decision does not “draw its essence” from the CBA – *extremely* deferential standard
- Pay attention to your CBA’s dispute resolution language
 - Review these provisions for collective bargaining proposals if necessary
- Standard legal principles apply
 - Take the grievance board/arbitration seriously
 - Maintain a solid documentation policy
 - Have your evidence in order
 - Practical arguments can be as important as legal arguments, especially at an industry board
 - Seek legal assistance if it is a complex and/or potentially costly allegation

Responding to Union Grievances

- Always first, review the relevant CBA language
 - Sections cited by the grievance
 - Grievance process language (note: timelines are important)
- Respond to the grievance as required by the CBA
- If/when a written response becomes necessary:
 - Respond only to the specific allegations presented by the union
 - Assert all potential defenses in the first response
 - CBA defenses (e.g., timeliness, management rights)
 - Legal defenses (e.g., vague, incomplete, not supported by evidence)
 - Normally include the statement, “[COMPANY NAME] denies the grievance.”

THANK YOU!

QUESTIONS?

Links

- ❖ CLRC <https://www.clrcconsulting.org/>
- ❖ Bureau of Labor Statistics <https://www.bls.gov/>
- ❖ Management Guidance, LLP <https://mguidance.com/>

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