

EXAMPLES OF FAVORABLE INDUSTRY CONTRACT LANGUAGE

SMACNA's Labor Relations Department was asked by Association Leadership and the Labor Committee to review industry Collective Bargaining Agreements (CBAs) to provide management negotiating committees with examples of favorable local contract language that could prove useful in considering and drafting contract proposals. The following are examples of such language that were submitted by SMACNA Chapter Executives or researched by Labor Relations Staff.

MANAGEMENT RIGHTS

Southwest Sheet Metal CBA

“(A). It is agreed that the Employer reserves the rights of Management at all times, except as abridged, delegated, granted or modified by this Agreement. The Employer retains the sole right to manage its business and direct the workforce and to supervise the employees, covered by this Agreement. When required by building owners, governmental agencies, general contractors or customers as a condition of performing work on a project, background checks will be permitted as per the terms and conditions of the contract documents.

(B). By way of example, the term “Management Rights” includes: the right to manage covered employees; the right to schedule working hours; the right to establish or change work schedules or standards and direct work forces, including the right to determine the size of the work forces; the right to hire, promote, transfer, suspend, discipline or discharge any employee for just cause; the determination of safety, health and property protection measures for covered employees; the establishment, modification and enforcement of rules and regulations which are not in conflict with this Agreement.

(C). The Employer reserves the Right of Management at all times, and the right to select, in cases of reduction or replacement of forces, those employees who are, in its estimation, the best qualified. The Employer may designate work that employees shall do, without regard to seniority, but otherwise in accordance with the terms and conditions of this Agreement.

(D). The foregoing enumeration of Management Rights shall not be deemed to exclude other functions not specifically set forth. The Employer retains all legal rights not specifically limited by this Agreement. The maintenance of discipline and efficiency of the employees is, subject to the provisions of this Agreement, within the sole, complete and exclusive rights and responsibilities of the Employer.”

Midwest Sheet Metal CBA

“Employer Rights. The Union recognizes the following Employer rights:

- a. The right to hire independently of this referral procedure, but the Employee shall notify the Union of his hire before going to work.

- b. The right to reject a Journeyman for cause. The Employer agrees not to discriminate in any way against a referred Journeyman.
- c. The right to manage and direct production, including the right to plan, direct and control operations in the shop and/or at the job site.
- d. The right to schedule working hours and to maintain discipline and efficiency of employees.
- e. The right to require Employees to observe rules and regulations and the Joint Substance Abuse Policy (Addendum 30), consistent with the terms of this Agreement.”

Midwest Sheet Metal CBA

“The Employer shall retain the sole right to manage his business and direct his work force; to supervise the work of his employees in scheduling all construction work; to judge the satisfactory performance of his employees without discrimination and to select and utilize tools and fabricating equipment in the shop and on the job site.

To maintain order and efficiency on the job site including the right to hire, discharge, assign, transfer and direct his work force.

To determine the number of hours worked in the shop and field; to determine the starting and quitting time of the employees; subject to regulations and restrictions imposed in this Agreement; to reserve the sole right to schedule the shipment of all goods which are covered by this Agreement, subject to such regulations and restrictions governing the exercise of these rights as are expressly provided in this Agreement.”

STRIKES

Southwest Sheet Metal CBA

“Neither the Union nor any of the employees covered by this Agreement will collectively, concertedly or individually induce, engage or participate directly or indirectly, in any strike, sympathy strike, picketing, slowdown, stoppage or other curtailment of interference with the Employer's operations, or interference with the flow of materials or persons in or out of places where the Employer is doing business. The Union agrees to exert every effort through its local officers and representatives to end any unauthorized interruption of work. The Employer will not lock out any of the Employees covered by this Agreement.

(A) The elimination of any strike or lockout caused by an impasse of negotiations at the time a current Collective Bargaining Contract has expired is not included above. An individual's rights shall not be in jeopardy by any language in this Article.”

RESOLUTION 78

Midwest Sheet Metal CBA

“Section 1. In accordance with Resolution 78, when a project is competitive in nature, it is agreed that the wage/fringe package will be 80% of the journeyman’s total package and will apply throughout the duration of each project that shall supersede those established herein so as to place a bidding contractor in a competitive position. The wage package will be as follows:

RESOLUTION 78 RATES - Effective June 1, 2013-

Effective January 1, 2014 – (Wages based on January 1, 2014, journeyman wage.)

BASE WAGE	VACA-TION	OPF/CO	TAX-ABLE	ANNU-ITY	HEALTH INS	PEN-SION	iTi/OHI/LSF	LTF	TOTAL PKG
19.59	1.25	.31	21.15	3.00	5.46	6.82	.15/.02/.01	.36	36.97

Effective June 1, 2014 – (Wages based on June 1, 2014, journeyman wage.)

Of the \$.15 to the iTi, \$.12 goes to the iTi and \$.03 goes to the National Energy Management Committee (NEMIC) (see Article 8, Section 15 regarding NEMIC contribution).

A competitive project is a job, whether inside or outside Local X’s jurisdiction, where a non-union contractor could capture it if Resolution 78 wages, hours and/or working conditions are not implemented.

All contractor decisions on wages, hours and working conditions shall be in writing.

The reduction in the wage rate determined above shall be spread among all Local X members and apprentices (except preapprentices) covered by this Agreement who are employed by the Employer within or outside the jurisdiction of Local X on the basis of hours worked on competitive projects.

The hours and rate reduction, if any, of Local X members who are employed by Employer outside the jurisdiction of Local X on competitive projects will also be spread in the same manner among all Local X members and apprentices (except preapprentices), regardless of whether such members or apprentices are working within or outside the jurisdiction of Local X.

The Employer will provide weekly reports showing hours worked by each member and apprentice of Local X on competitive projects.

If the Employer employs apprentices on a competitive project, the amount of reduction shall only be that percent of the full reduction which is equal to the apprentices’ percent of journeyman scale. (See Article 11, Section 6)

The ratio in the field will be one (1) preapprentice to one (1) journeyman. Such apprentices or preapprentices will be part of the ratios set forth in Articles 11 and 12.

If the contractor needs additional relief in the field, such relief will be at the sole discretion of the Business Manager.

The National Joint Adjustment Board retains jurisdiction with respect to Resolution 78 relief.

Contractors agree to show competitive and industrial hours per employee per job and full-scale hours per employee with no breakdown by job.

Any contractor found declaring the wrong rate for a job, that contractor will pay the full rate on that job. This includes Industrial Rate work and Resolution 78 work.

Section 2. The wage package for journeymen sheet metal workers and apprentices for shop and field to apply throughout the duration of each Resolution 78 project bid during these time periods.

Section 3. Industrial work where there is nonunion competition shall be addressed under Resolution 78.”

TRAVEL PAY

West Coast Sheet Metal CBA

“a. Each Employer who has a permanent place of business in City or Imperial Counties shall select either his shop or the office of Local X as his Zone Center. The Zone Center for Employers without a permanent place of business in City or Imperial Counties shall be the Local X office.

b. Employees on job sites more than 100 radius miles but less than 150 radius miles from the Employer’s Zone Center shall receive subsistence in the amount of \$60.00 per day on a five-day per week basis. Subsistence shall not be required over weekends or holidays.”

Southwest Sheet Metal CBA

“SECTION 1. When employed in a shop or on a job within the limits of Article I & II of the Addenda, employees shall be governed by the regular working hours specified herein and shall provide for themselves necessary transportation within the said limits from home to shop or job at starting time and from shop or job to home at quitting time, and the Employer shall provide, or pay, for all necessary additional transportation during working hours.

SECTION 2. When employed outside of the limits specified in Section 1 of this Article, and within the jurisdiction of the Union, employees shall provide transportation for themselves which will assure their arrival at the limits specified in Section 1 of this Article at regular starting time, and the Employer shall provide or pay for all additional transportation for such jobs, including transportation from such job back to the limits specified in Section 1 of this Article which will assure arrival at such limits at quitting time. As an alternative to the foregoing method, travel expense may be paid by a zone or other method of payment. If this alternative method is used, it will be provided in a written addendum attached hereto.

If an Employer sends an employee to perform work outside of the territorial jurisdiction of the United States of America or Canada, travel pay and/or subsistence arrangements shall be negotiated locally.

The parties intend travel pay to fairly compensate employees for travel, not to place contractors at a competitive disadvantage due to geographic location or to create artificial barriers against out-of-area contractors.”

Northeast Sheet Metal CBA

“Travel pay shall be paid at the Internal Revenue Service Standard Rate per mile, for all miles over fifteen (15) miles. This will be a true free zone with no mileage paid inside the fifteen (15) mile zone. Maximum travel expense per day will not exceed ten dollars and fifty cents (\$10.50).

Example: If the job site is eighteen (18) miles from the employee’s home or shop, whichever is closer, mileage would be 18 miles minus the 15 mile free zone equals 3 miles times the adjusted rate per mile times 2 ways (back and forth).

- (A) Travel expense rate per mile will be reviewed on January 1st of each year of this Agreement and will be adjusted to meet the Internal Revenue Standard Rate.
- (B) All miles shall be measured in miles actually traveled by the shortest practicable route.
- (C) The Employer agrees to pay all tolls paid by each employee traveling over the shortest practicable route to the job. No tolls shall be paid by the Employer when the job is within the fifteen (15) mile free zone.
- (D) No man shall be permitted to ride on any truck except in the cab of said truck, or when the truck is equipped to carry passengers according to the state law.
- (E) Any employee going to a travel job (over 15 miles) required to report to the shop to pick up a vehicle before working hours will be paid full Travel for all miles traveled. (No Free Zone and no \$10.50 per day cap)
- (F) Any employee required to report to the shop going to a non-travel job (less than 15 miles) will be considered on the clock at the start of their workday and will report back to the shop by the end of their workday.”

BENEFIT ALLOCATION

Midwest Sheet Metal CBA

“Union may at any time during the term of this Agreement modify the Pension contribution rate and pay for same out of its total package (implementation as per Article 32, Section 1).”

Southwest Sheet Metal CBA

“The Employer will increase its NPF Contribution Rate on or before the date, and in the amounts, required in the First Alternative Schedule. The Local Union shall allocate from the wage & fringe package sufficient monies to make all contribution increases required by the NPF under the First Alternative Schedule or any amendments thereto.”

West Coast Sheet Metal CBA

“Allocation of Wage Package: Package increases shall be allocated to established funds by the membership of the Local Union. During the term of the Agreement any decrease in contributions required by trustees of the established funds, with exception to Health Plan B, shall be allocated to wages. Any increase in contributions required by the trustees shall come from the taxable wage, with exception to Health Plan B.”

INDEMNITY

West Coast Sheet Metal CBA

“The Local Union in consideration of this dues check off provision, hereby indemnifies the Employer from any and all losses, suits and claims of any kind or nature which arise from the said Employer's check off of Union dues as provided for in this Agreement.”

Midwest Sheet Metal CBA

“Hold Harmless: The Union agrees to indemnify and save harmless the Employer from any damages of any kind or nature whatsoever that the Employer shall be obligated to pay to a registrant in the management and operation of such hiring procedures, as outlined above.”

REQUIRED TRAINING

Southwest Sheet Metal CBA

“Section 1. OSHA
The Occupational Safety and Health Act of 1970, Parts 1910 and 1926 Safety and Health Regulations for Construction and amendments thereto by any Federal or State enforcement agency is made a part of this Agreement by reference. It is the obligation of the Employer and the Union to be informed of the rules and regulations and amendments thereto.

Section 2. SAFETY EQUIPMENT

The Employer is required to furnish and the employee will use all safety equipment necessary under this Article. The employee is responsible to furnish and use safety shoes.

Section 3. SAFETY TRAINING

All employees will be required to attend safety training classes as may be required by OSHA or other regulatory government agencies. Classes will be scheduled and conducted by the Local Union. Job specific safety training will be scheduled and conducted by the Employer.

It is understood that members will be required to attend safety training on their own time.

Section 4. CONTINUING EDUCATION

Employers may provide continuing education for Construction Management and Administrative Training for "designated" journeymen and foremen. Journeymen will be required to abide by requirements of the state when renewing their license. Designated employees are those employees invited (in writing) by the Employer to attend training sessions.

It is understood that only designated journeymen and foremen will be paid for attending training classes required by the Employer. At the discretion of each Employer, others may be allowed to voluntarily attend on their own time."

Midwest Sheet Metal CBA

"Eligibility for Wage Increase. Beginning with the June 1, 2006 increase, a current CPR certification shall be required to secure a wage increase. On alternating years from those requiring recertification in CPR, one additional advanced training class is suggested."

INFERIOR WORK CLAUSE

Southwest Sheet Metal CBA

"Any defective and/or inferior work installed through the fault or neglect of the journeyman will be corrected by the journeyman at no labor cost to the Employer, provided, plans and specifications or a working sketch has been furnished to the journeyman or the work was installed contrary to the applicable codes. Corrections will be made as soon as possible in order not to delay the progress of the job. This determination and the final decision will be made by the Union."

REFERRALS

West Coast Sheet Metal CBA

“Registration and Dispatching of Workers

- (1) Registration Lists: The Dispatching Office will maintain lists in such manner as to dispatch workers either as Journeyman Sheet Metal Workers or Apprentices, without regard to union or nonunion status of the registrant. Registrants shall be placed on either the “A” list or “B” list for dispatching. It shall be the responsibility of the Dispatching Office to determine the appropriate list for each registrant. Registrants shall be dispatched in the following order of preference:
 - (a) Group “A”: Signatory Employers may requisition workers specifically by name from Group “A”, provided such workers are available for employment. An Employer not signatory to this agreement may requisition workers from Group “A” specifically by name provided this Employer has previously employed such workers. When workers in Group “A” are requisitioned by telephone, the Employer shall furnish a supporting written requisition to the Union within forty-eight (48) hours after the dispatch. After requisitioning two (2) employees by name, the third employee requisitioned must be taken from the out of work list. **Exception:** Any Employee laid off by the employer within the previous 120 days may be recalled.
 - (b) Group “B”: Employers may requisition Employees specifically by name from Group “B” if that Employer has previously employed such Employees.”
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INTEREST ARBITRATION

Southeast Sheet Metal CBA

“In the event the National Joint Adjustment Board fails to reach a unanimous decision and the parties have been so informed, the parties shall continue to meet on unsettled issues for thirty (30) days. After such time one or both parties may submit items unsettled to binding arbitration on the demand of either party. Within five days following receipt of a demand, the parties shall endeavor jointly to select an arbitrator.

If within such period, the parties are unable to agree upon the selection, the parties shall make a joint request to the Federal Mediation and Conciliation Service for a list of seven arbitrators who are members of the National Academy of Arbitrators and who have experience in hearing and deciding construction arbitration cases. The parties shall alternately strike one name each until but one name remains and the person so named shall be the Arbitrator. The Arbitrator shall convene a hearing, at which time all evidence and arguments presented by the parties shall be considered. The Arbitrator's decision will be rendered on unsettled items only. The Arbitrator will accept the Union's position in total or the Employer's position in total as his/her decision on each item. The decision of the Arbitrator shall be in writing and shall be final and binding on both parties. There shall be no cessation of work by strike

or lockout during the arbitration process. Each party bears its own expenses, but the fees and expenses of the Arbitrator and the general expense of arbitration shall be borne by the parties in equal parts.”

Midwest Sheet Metal CBA

“This Agreement and Addendum I, Sections 1 – 35 and Addendum II, Sections 1 - 7 attached hereto and incorporated herein shall become effective on the first day of June, 2013, and remain in full force and effect until the 31st day of May, 2018 and shall continue in full force from year to year thereafter unless written notice of reopening is given not less than one hundred fifty (150) days prior to the expiration date. In the event such notice of reopening is served, this Agreement shall continue in force and effect until negotiations relating thereto have been terminated by either party, or May 31, 2018 whichever is later; provided, however, if the parties are unable to reach agreement, any unsettled issue shall, upon the request of either party, be submitted to the determination of an impartial arbitrator whose determination shall be final and binding upon the parties. The arbitrator shall be selected by the parties or, if they are unable to agree, in accordance with the rules and procedures of the American Arbitration Association. The arbitrator shall be authorized to resolve any outstanding issue based upon the “final offer position” of either party, which position shall be submitted in writing and shall be designated by each party as its “final offer position”. The arbitrator shall be empowered to select the final offer position of either party, as he shall deem appropriate. He shall not be authorized to modify, amend, or compromise the positions of the parties in any respect; provided further, however, the arbitrator shall not be empowered to decide between the positions of the parties on any non-mandatory subject of bargaining. The fees and expenses of the arbitrator shall be borne equally by both parties.”