

International Association of Sheet Metal, Air, Rail and Transportation Workers

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Joseph Sellers, Jr.
General President

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SENT VIA EMAIL – ahilger@smacna.org

Aaron Hilger
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Dear SMACNA National,

I understand contractors have received threats from the UA in recent weeks regarding the assignment of HVAC work. I write to provide important context and assure you that SMART is aggressively fighting back against these attacks and stands ready to defend our contractors.

Earlier this year, an arbitrator appointed under the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the “Plan”) heard a dispute between SMART and the UA over the installation of ductless split HVAC systems at a housing project in San Francisco, California. The Plan is the voluntary arbitration mechanism for resolving jurisdictional disputes administered by the North American Building Trades Unions (NABTU). The installation of ductless split systems had been assigned to SMART by the contractor, which was consistent with the prevailing practice in the San Francisco area and elsewhere. Despite this, the arbitrator sided with the UA based on a jurisdictional agreement the SMWIA and UA had entered into in 1956. The arbitrator’s decision was mistaken. He expanded the 1956 Agreement to work the parties who negotiated that agreement had not intended it to cover or could even foresee, for its technological development was several decades away. When crafts negotiate jurisdictional agreements, they intend their terms to be construed narrowly. The arbitrator strayed from this principle. Had he not misinterpreted the 1956 Agreement, it is likely the original assignment to SMART would have been upheld on account of the local prevailing practice.

That brings me to an important point: jurisdictional disputes under the Plan are resolved on a project-by-project basis. The arbitrator concluded that the work at this **one housing project** in San Francisco should be reassigned to the UA. He did not decide that ductless split systems are the UA’s work nationwide, or even anywhere else in San Francisco, nor could he. Contractors can and should continue assigning this work to sheet metal workers as they have in the past.

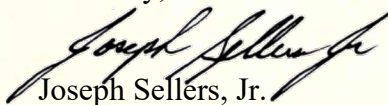
The threats UA locals have made about benefits liability contractors could face if they award this work to SMART are intended to scare contractors away from the mutually beneficial relationships they have had with SMART. But they do not hold water. In fact, if a UA local makes such a threat, or files a grievance or files a collection suit in order to force a change in assignment, that is illegal. SMART can and will help any contractor in this situation to make the right legal moves to push back.

Contractors should also understand that the Plan does not punish them for the initial assignments they make. When an arbitrator makes a decision under the Plan, the only relief they can issue is prospective. The Plan does not allow arbitrators to award back pay or damages. If the arbitrator's decision is to reassign work, then the contractor has seven business days to make the switch. Damages are only available if the contractor does not comply with the decision by that time. In the San Francisco housing project case, the contractor was able to complete that phase of the project with sheet metal workers within those seven business days, and faced no liability.

Regarding the threats about benefits liability some UA locals have made, if the arbitrator reassigns work to a craft that did not get the initial assignment from the contractor, that craft cannot then grieve the contractor for back pay, nor can its pension funds sue for unpaid benefits for the period of the initial assignment. Until an arbitrator appointed under the Plan issues a decision, contractors are protected. They can incur liability after a decision is reached only by disobeying it.

In closing, I would like to reiterate our commitment to your organization and our contractors to protect our work jurisdiction. SMART will utilize its financial and legal resources to help contractors respond to these attacks. UA locals have chosen to use threats and fear to disrupt the relationships that have worked for contractors for decades. That is not our organization. SMART will stand by and defend our contractors and the efficient and professional work they have and will continue to perform.

Sincerely,



Joseph Sellers, Jr.
General President

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