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

1750 New York Avenue, N.W.
Suite 600
Washington, DC 20006

SHEET METAL | AIR | RAIL | TRANSPORTATION
SMART

Phone: 202-662-0842
Fax: 202-662-0894
Email: jsellers@smart-union.org

Joseph Sellers, Jr.
General President

SENT VIA EMAIL

December 21, 2022

To: All U.S. Business Managers and Regional Council Presidents

Re: UA Jurisdictional Dispute

Dear SMART Business Managers and Council Presidents,

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 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 contractor's original assignment of the work to SMART would have been upheld on account of the local prevailing practice.

The UA has taken this decision and waived it in the face of our contractors across the country. In some areas, UA locals have threatened contractors who award this work to SMART with lawsuits for unpaid benefits to their pension fund. The path these UA locals have chosen is built on falsehoods about what the arbitration decision means. Their intent is to scare our contractors away from the mutually beneficial relationships they have had with SMART. It is vital that we correct the record and protect those relationships.

To that end, there are four points you and your contractors need to hear:

- First, arbitration decisions under the Plan only apply to the project in question. If and when future jurisdictional disputes concerning this work are brought to the Plan, the arbitrator

who hears that case will not be bound by this arbitrator's mistaken interpretation of the 1956 Agreement. As described above, there are strong arguments against it.

- Second, arbitrators under the Plan have no authority to award back pay or any other damages when their decision results in a reassignment of work. When an arbitrator issues a decision, the contractor has seven business days to comply with it. Damages can be awarded only if the contractor does not comply with the decision by the end of those seven business days. In this case, the contractor was able to complete that phase of the project with sheet metal workers within those seven business days. SMART members did the work, with no liability to the contractor.

- Third, neither the UA nor its pension funds can grieve or sue for back pay or damages based on the arbitrator's decision. **This point is crucial for our contractors to understand.** The threatening remarks about benefits liability are hollow. The only circumstance in which a contractor can be liable for damages under the Plan is when it fails to comply with an arbitrator's decision within seven business days. Even if the arbitrator reassigns the work to the craft that did not get the initial assignment from the contractor, that craft cannot hold the contractor liable for the initial work it did not get.

- Fourth, and most importantly, our contractors can and must continue awarding this work to SMART as they have done in the past. To emphasize, **the arbitration decision applies to just this one housing project in San Francisco.** The UA and its benefit funds cannot threaten a SMART contractor with liability for work assigned to SMART on any other project. If they make such a threat, or file a grievance or file 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.**

It is unfortunate that we have to deal with these attacks from UA locals at a moment when the demand for skilled labor and the support for organized labor are at all-time highs. But backing down is not an option. Along with this message to you, I am writing to SMACNA to set the record straight and to assure them that we will defend contractors against these maneuverings. Lastly, if you hear rumblings about this in your area, please notify your International Representative as soon as possible.

In Solidarity,

Joseph Sellers, Jr.
General President

JS/LR/aa