



Date: November 2, 2010

To: All SMACNA Contractors and Chapter Executives
All SMWIA Business Managers and Agents

Subject: SMACNA and SMWIA announce change to Article X, Section 10 of Standard Form of Union Agreement

As our industry continues to struggle to weather the worst economic crisis since the Great Depression, it has become even more imperative that SMWIA Local Unions and SMACNA Contractors and Chapters use all available tools to increase employment levels, stabilize our fringe benefit funds by increasing hours and vigilantly work together to recapture lost market share. To assist in that regard, SMACNA and SMWIA have amended the Standard Form of Union Agreement (SFUA) to provide for a method by which parties can establish or amend local specialty agreements to enhance market recovery in a specialty segment of the industry.

New verbiage added to SFUA Article X, Section 10 is underlined below:

In addition to the settlement of disputes provided for in Sections 1 through 8 of this Article, either party may invoke the services of the NJAB to resolve disputes over the initial establishment or amendment of terms for specialty addenda, if the provisions of Article X have been adopted in their entirety, and without modification.

Such a dispute may be submitted upon the request of either party any time that local negotiations for such an agreement, or amendment thereof, have been unsuccessful. Such a dispute shall be submitted to the NJAB pursuant to the rules as established and modified from time to time by said Board. The unanimous decisions of said Board shall be final and binding upon the parties. There shall be no strike or lockout over such a dispute.

SFUA Article XVI, Section 3 sets forth how local parties can proceed to incorporate new SFUA amendments into their local collective bargaining agreements (CBAs). This process is explained in detail in the attached Q & A addressing the Article X, Section 10 SFUA revision.

All SMACNA Chapters, their contractors and SMWIA Local Unions are strongly encouraged to reopen their local CBAs as soon as possible to adopt the new language of SFUA Article X, Section 10. Following adoption of that provision, local parties are further called upon to closely examine specialty segments of the industry and to immediately negotiate responsive provisions that will enhance market share and hours in those segments to help us all to survive during these challenging times.



Michael J. Sullivan
SMWIA General President



Deborah A. Wyandt
Chair, SMACNA Labor Committee

Q & A on Revisions to SFUA Article X, Section 10

For a number of years, Article X, Section 10 of the Standard Form of Union Agreement has authorized the National Joint Adjustment Board to establish specialty addenda for local areas (where none existed), so long as the collective bargaining agreement included Article X in its entirety, without modification.

SMACNA and the SMWIA have recently agreed to modify this provision of the Standard Form, in response to the very serious economic conditions facing the sheet metal industry. This analysis is intended to explain the impact of the recent amendments, and how this contract provision may be utilized to assist local areas in improving the market for the industry.

Question: What does the revised language of Article X, Section 10 provide?

Answer: *In addition to the settlement of disputes provided for in Sections 1 through 8 of this Article, either party may invoke the services of the NJAB to resolve disputes over the initial establishment **or amendment** of terms for specialty addenda, if the provisions of Article X have been adopted in their entirety, and without modification.*

*Such a dispute may be submitted upon the request of either party any time that local negotiations for such an agreement, **or amendment thereof**, have been unsuccessful. Such a dispute shall be submitted to the NJAB pursuant to the rules as established and modified from time to time by said Board. The unanimous decisions of said Board shall be final and binding upon the parties. There shall be no strike or lockout over such a dispute.*

Question: How was Article X, Section 10 originally intended to operate?

Answer: Initially, in establishing Article X, Section 10, it was intended that its provisions could be used to foster the initial development of a specialty addendum to the Building Trades agreement, with the addendum being limited to a specified market segment. The intention was that this provision would encourage local parties to negotiate specific terms that address the needs of an identified specialty market.

For example, if a local area did not have an addendum covering residential work, and such an addendum would help recapture market share in that segment, the Association or the Local Union could request to bargain concerning special contract terms for that market. That request to bargain could be made even during the term of the Building Trades agreement.

If the parties were unable to agree on terms for such an addendum, either party could submit the dispute to the National Joint Adjustment Board. The NJAB is authorized to resolve that dispute, by establishing terms for such an addendum.

Question: How does the new version of Article X, Section 10 differ from the earlier version?

Answer: The new version makes it clear that the procedures of Article X, Section 10 are also available to amend the terms of an existing specialty agreement, in contrast to the previous version of Article X, Section 10, which was confined to disputes involving the “initial establishment” of such an addendum. Therefore, under the new version of Article X, Section 10, an existing residential addendum could be brought to the NJAB midterm, if it is no longer consistent with market realities for that segment of the industry.

Question: Why did SMACNA and the SMWIA revise Article X, Section 10 in that manner?

Answer: For two reasons. First, it was desirable to provide that even if the parties have previously established such an addendum, Article X, Section 10 may be invoked to modify the provisions of the existing addendum in appropriate circumstances.

Secondly, some areas have not incorporated Article X, Section 10 into their agreement, and now wish to do so in response to the current economic situation. If a collective bargaining agreement is in effect in such an area, a party would normally have to wait until contract expiration in order to negotiate Article X, Section 10 into the agreement. However, because of the recent modification to Article X, Section 10, the party wishing to incorporate that provision need not wait until contract expiration, if its collective bargaining agreement contains Article XVI, Section 3 of the Standard Form of Union Agreement. That section provides:

Notwithstanding any other provision of this Article, or any other Article of this Agreement, whenever an amendment to the Standard Form of Union Agreement shall be adopted by the sponsoring national associations, any party to this Agreement, upon the service of notice to all other parties hereto, shall have this Agreement reopened thirty (30) days thereafter, for the sole and only purpose of attempting to negotiate such amendment or amendments into this Agreement for the duration of the term hereof. There shall be no strike or lockout over this issue.

Because the national parties have revised Article X, Section 10 as an amendment to the Standard Form, local parties with Article XVI, Section 3 may now formally request to bargain over the issue of

including the revised language of Article X, Section 10 into their agreement.

If such a local area does not have the procedures of Article X, Section 8 incorporated within their agreement, and one party rejects the proposal to include the new version of Article X, Section 10 in the agreement, that ends the issue, and the inclusion of that language must wait until contract expiration.

However, if the parties' agreement has Article X, Section 8, any dispute over the inclusion of the revised language of Article X, Section 10 may be submitted to the NJAB. The NJAB has the authority to direct that the revised language of Article X, Section 10 be incorporated in the agreement.

Question: If we already have Article X, Section 10, or we obtain the new version of Section 10 in the manner just described, how do we go about negotiating such a specialty addendum where none presently exists?

Answer: Although the procedures for doing so are not spelled out in contract language or the Procedural Rules for the NJAB, what was contemplated is that such negotiations should be approached in the following manner.

- First, there should be a fair and objective determination of what market segments have less than average union density, or, have been totally lost to non-union competition. Preferably, that assessment should be done jointly by the Association and the Local Union.

- Once that analysis has been completed, a realistic assessment should be made concerning specific contract terms that may be necessary to recapture work within the identified market segment. That process should not be viewed as a way of getting every contract provision that has been on every contractor's or the union's "wish list". Rather, the analysis should focus on terms that are realistically needed in order to expand and recapture work opportunities in identified market segments.

- Good faith negotiations should be conducted in an effort at reaching an agreement on terms for such an addendum. Those negotiations should focus only upon those market sectors where union market share is low, with the objective of establishing specific contract terms that are realistically necessary to recapture market share in that segment.

- If good faith negotiations do not result in an agreement, then the matter may be submitted to the National Joint Adjustment Board. Unlike an Article X, Section 8 proceeding, there are no prescribed forms for a submittal under Article X, Section 10. However, such a submittal should include the following in order to assist the NJAB:
 1. Statistical evidence concerning the union's market share in the identified segment that is to be governed by the proposed addendum.

2. Statistical information concerning the wage rates and fringe benefits being paid by employers that perform the majority of the work in that segment.
3. The number of man hours that might realistically be generated in that market segment, if an appropriate addendum is established.
4. Any available information about market recovery addenda or specialty agreements used by other crafts for the same general market segment.
5. Detailed minutes concerning the negotiations for the specialty addendum.
6. Whatever information may be available establishing that contractors will actually bid work covered by the addendum, if suitable terms are reached.

This same general approach should be used in cases involving the amendment of an existing specialty addendum.

Question: What happens if the NJAB fails to reach a decision, and deadlocks concerning the establishment of such an addendum?

Answer: If the NJAB hears such a dispute mid-term during the contract, and deadlocks over the establishment or amendment of the specialty addendum, that only means that the Building Trades Agreement will continue in effect without any modification. Consequently, there would be no potential for a work stoppage or a strike.

This is in contrast to the situation under Article X, Section 8. In an Article X, Section 8 proceeding, the collective bargaining agreement has, or soon will, expire. Consequently, in the event that the NJAB deadlocks during an Article X, Section 8 proceeding, the Union has the legal right to strike in support of its position once the NJAB procedures are complete, and the contract has expired. The contractors would also have the right to lock out employees.

Question: Are there any limitations concerning the types of relief that may be proposed during negotiations for such an addendum?

Answer: One of the objectives underlying the modifications to Article X, Section 10 was to increase market share in identified market segments, so that contributions to fringe benefit funds will be increased. That was particularly true with respect to pension contributions, as many pension funds have been seriously affected by the investment market and the dramatic decline in contribution hours.

For that reason, as well as potential issues of compliance with the Pension Protection Act in the case of a pension plan that is “endangered”, or in “critical” status, it was agreed that such an addendum could not provide for pension contributions at a rate less than what is set forth in the Building Trades Agreement. However, that is the only hard and fast restriction. The parties may look to a variety of modifications to their agreement, such as different wage rates, modified ratios and work hours, and relaxed travel pay provisions within the Local Union’s jurisdiction, in order to recapture work within this particular market segment.

Question: How can I get additional information concerning utilization of Article X, Section 10?

Answer: Local Chapters should contact the Labor Relations Department at SMACNA National for assistance. SMWIA Local Unions should contact the International Union for further information.