

## Collective Bargaining Issue Bulletin Series

### Collective Bargaining - Achieving the Best for Our Members

#### Session 3 of 3

#### SUMMARY

This is the last of a three-part issue bulletin series for members of locals preparing for negotiations. It is intended to serve as background for the upcoming negotiations for a new collective bargaining agreement. The series outlines the collective bargaining process, clarifies key language that will be proposed for inclusion, and solicits member questions and suggestions. The series recognizes that member knowledge and support is critical for successful negotiations.

This issue bulletin focuses on the International Masonry Institute clause, on the Preservation of Work/Anti-Double Breasting clause, and on questions and concerns members still have about the collective bargaining process.

#### BACKGROUND

The first two issue bulletins:

- Introduced members to the bargaining process;
- Described how the collective bargaining process can achieve better wages, benefits and working conditions, and strengthen our union for BAC members;
- Introduced members to six key clauses: Union Recognition & Access, Subcontracting, Traveling Contractors, Steward, Grievance Procedure, and No Strike/No Lockout clauses; and
- Explained how these clauses strengthen the local's ability to protect our work and represent its members on the job.

Discussions with members over the years have brought to light a number of questions and misconceptions about the bargaining process and key agreement clauses.

- Some members were not aware that if a BAC contractor is not signed to a Traveling contractors clause, the contractor is not required to pay union wages when it travels to territories covered by other BAC locals.
- Other members were concerned that the "No Strike/No Lockout" clause – which in fact helps to keep members working during the terms of the agreement – could be harmful.

For answers to these and other questions and concerns commonly raised by members, please go to Page 5.

### *Collective Bargaining – Good for Members and the Local*

One concern that members often have is that the “cost of negotiations puts an undue financial burden on our local.” This is not the case.

In fact, the opposite is true. Workers join unions to be able to influence their pay, benefits and working conditions, and for protection if they are treated unfairly on a job. It is not possible to achieve this influence and protection without a collectively bargained agreement. Unions have a legal right to bargain with employers over the conditions under which workers covered by the agreement will be employed. Once a collective bargaining agreement is signed, employers are legally bound to honor the terms of the agreement. This means that employers cannot arbitrarily change wages, stop making benefit contributions, or change hours of work and other working conditions unless the local and its members agree.

The collective bargaining process has been seriously weakened in the United States over the years since the Taft-Hartley Act was passed in 1947. But a collective bargaining agreement is still the most powerful tool available to locals and their members. Without the influence and power flowing from a collective bargaining agreement, unions could not help their members on the job and workers would have few reasons to join and support a union. A lack of members and dues income would create a real financial burden on a local.

#### *Strong Language = A Strong Agreement*

A collective bargaining agreement’s power comes from the language in the agreement. Therefore, every local needs to secure language that gives the fullest possible protection to a member’s current *and* future work opportunities. The two remaining clauses discussed in this issue-in-brief series help create and protect future work opportunities.

#### *International Masonry Institute Clause*

**The masonry industry is very large and very fragmented. The majority of the thousands of contractors in the industry are very small, with 10 or fewer employees. Getting and keeping work is the major day-to-day challenge for masonry contractors and workers. Competition is stiff from other trades, new products, and the non-union segment. How can BAC help to build and strengthen the industry and to make sure members have the skill and training to compete?**

**Answer: The “*International Masonry Institute (IMI)*” clause.** Masonry is a diverse, fragmented industry that for much of this century has suffered from a seriously declining building industry market share due to competition from non-masonry products, materials and systems. That decline in market share must be reversed if masonry is to maintain a position of strength in the building market. In addition, BAC members and their employers have also faced intense and growing competition from non-union masonry contractors and workers who have

taken away our work in many markets. That challenge must be rolled back in order to assure that our members will, in the years ahead, continue to find secure, good-paying jobs in masonry.

To defeat these threats the masonry industry must re-invest large amounts of money in basic activities such as training, research, marketing and advertising. But the masonry industry does not have large corporations capable of accumulating this kind of money on their own and re-investing it to assure the future of masonry.

The BAC Project 2000 Committee – made up of local union leaders – looked at this problem and outlined a program to deal with it. The Committee designated the International Masonry Institute (IMI) as BAC’s instrument for developing and strengthening the masonry industry. And it recommended that IMI be funded by collectively-bargained contributions – the only effective way for masonry to accumulate the funds required for industry development.

In addition, the Committee set funding goals for IMI based on an analysis it made of the costs of needed industry development programs. That funding goal: collectively-bargained employer contributions to IMI equal to three-percent of the gross wage packages of BAC members. The Committee concluded that contributions at that level were needed for IMI’s programs to be effective. And, they were feasible and practical in terms of an industry “cost-of-doing-business” factor – most other industries spend much more for such programs.

The Committee’s recommendations have been endorsed by successive IU Conventions which have passed resolutions mandating that BAC locals make in good faith their best efforts to obtain, through collective bargaining, the funds IMI needs to do its job. The IMI clause brings BAC locals into compliance with those resolutions.

### ***Preservation of Work/Anti-Double Breasting***

**What’s to prevent a contractor from setting up side-businesses and performing our work non-union?**

**Answer: The “*Preservation of Work/Anti-Double Breasting*” clause.** Over the years less than scrupulous employers have developed the following technique for avoiding their responsibilities under a collective bargaining agreement:

- After the employer – say it’s the ABC Masonry Company – signs the agreement, the owners and managers of ABC Masonry create a “new company” – the XYZ Masonry Company.
- The new company, XYZ Masonry, then bids masonry work of the same kind that ABC Masonry had been bidding and doing.
- And, XYZ Masonry then does that work non-union, paying lower wages than the collective bargaining agreement calls for, lowering working conditions, and hiring non-union workers.

This is what is called creating a double breasted union/non-union operation. And, an employer can get away with this kind of a scam scott free if our collective bargaining agreements are not written correctly.

The “Preservation of Work (Anti-Double Breasting)” clause is designed to prevent employers who have signed our collective bargaining agreement from creating any kind of new non-union operation that would allow the employer to get around the agreement and to do our work non-union at non-union wages and working conditions. To put teeth in the provision, the clause provides that an employer who does set up such a double-breasted operation commits a violation of the agreement. And, as a violation of the agreement, the union can take the employer to arbitration for that violation. The arbitrator can then require the employer to pay members, who lost work opportunities because of the violation, their lost wages and fringe benefits.

### *Staying Informed*

This is the last issue-in-brief in this three-part series on preparing for collective bargaining, but it is not the end of the information that members will receive, and it is not the last opportunity that members will have to ask questions about the process and progress. Your local officers will do their best to keep you informed through chapter and local meetings and information in the newsletter. You are encouraged to attend the meetings, read the newsletters and let your local officers know if you have questions and concerns. Remember – we are all in this together. A stronger collective bargaining agreement will benefit us all.

## **Collective Bargaining – Achieving the Best for Our Members** *Answers to Common Questions*

### **1. How does the bargaining process work?**

Collective bargaining is the process of negotiating over wages and working conditions. The law guarantees employees the right “*to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining.*”

Preparing for negotiations involves several steps, including: notifying the employer of the Union’s intent to negotiate a new agreement, notifying the Federal Mediation and Conciliation Service of the Local/ADC’s and employer’s intent to negotiate a new agreement or modify an existing agreement, and identifying and prioritizing what the negotiating committee will try to achieve. The negotiating committee, with input from the members, decides what issues will be raised in negotiations, how much of a wage increase will be pursued, and, if necessary, whether or not to take a strike vote and go on strike.

In addition, the negotiating committee works with the employer committee to set ground rules for negotiations. The ground rules cover such issues as when and where negotiations will take place, who will be the spokesperson for each side, how much information will be made public while negotiations are going on, and drafting and finalizing the new agreement. All of these items are determined at the Local/ADC level. With the approval of the IU Executive Board, a state or provincial conference may also bargain collectively on behalf of its constituent Locals (IU Constitution - Article X, F (3)).

The bargaining process itself involves give and take by both the union and the employer. Sometimes the union has the upper hand, particularly during good economic times when demand for skilled workers is strong. Other times the employer may have the upper hand. It is the union negotiating team’s responsibility to convince the employer that the items the union is requesting (wage increases, benefits, working conditions) are justified and reasonable.

### **2. What are the benefits of collective bargaining – how does it provide better conditions?**

Collective bargaining results in a contract that is legally binding on both the Union and its Contractors. The collective bargaining process is one of the most powerful tools available to unions and their members. It provides labor and management with a system for working through a broad range of work-related issues including wages, benefits, working conditions, and grievance procedures.

Without a collective bargaining agreement – which is the end result of the collective bargaining process – workers’ wages, benefits and working conditions are left up to the employer. Union workers – BAC members – work under collective bargaining agreements. A collective bargaining agreement is a legal document that details the amount members are

paid, their contributions to health, pension and other funds, and their working conditions. An employer signed to the agreement must, by law, comply with the agreement. Your Local/ADC's collective bargaining agreement guarantees you a certain level of wages, benefits and working conditions that will not change unless both sides agree to the changes.

In contrast, non-union workers work without the benefit of a collective bargaining agreement. Pay, benefits (if any), and working conditions are determined solely by the employer, and the employer is free to change them at any time.

**3. Who is in control of selecting the members who bargain? How many negotiators are there?**

Under the IU's Constitution, Local/ADCs must establish negotiating committees to bargain over wages and working conditions, and resolve questions in dispute between employers and the Local/ADC. The IU's Constitution states that a Local/ADC negotiating committee should consist of at least three members, one of whom is the Principal Officer of the Local/ADC. And, the Local/ADC's Constitution and By-Laws outlines who is eligible to serve on the negotiating committee and whether these individuals are elected or appointed.

**4. Can we have some younger members involved as apprentice negotiators?**

Negotiating committee members perform one, if not the most, critical function of our union. To adequately represent the members' interests negotiating committee members must have a strong working knowledge of both the trade and the industry.

To ensure that the individuals eligible to serve on the negotiating committee have this working knowledge and experience, our Constitution and By-Laws states that members of the negotiating committee must be eligible to run for office. Therefore, they must be journey-level workers. Apprentices, by their very classification, have not yet achieved a full working knowledge of the trade or industry.

This does not mean that apprentices cannot make important contributions to the collective bargaining process. In fact, to remain strong and fully represent all of our members we must have their input. Apprentices can have input into the collective bargaining process by sharing their concerns or suggestions with their elected Officers one-on-one, or at Local/ADC or chapter meetings.

**5. Will there be a strike next year? Will other trades honor our strike?**

One of the primary reasons for starting negotiations well before the existing agreements expire is so that there is time to work through our differences and avoid using a strike, or threat of strike, to get our members what they want. Your negotiating committee views a strike as the very last resort.

There is never a guarantee that other trades will honor a picket line, but good union members will not cross.

**6. Are the Contractors allowed to bring in scabs during a strike or lockout?**

This is an issue that has been hotly debated. The bottom line is that until we have some form of meaningful labor law reform in this country, or strong striker-replacement legislation, employers will be able to replace striking or locked-out workers with scab workers.

**7. How long can a union and Contractor keep working without a contract during negotiations?**

That decision is up to the union and the Contractor(s): a) both sides could go on working indefinitely, b) the union could go out on strike, or c) the employer could lock the employees out if a new agreement is not reached by the time the existing agreement expires. In most cases, however, both sides agree to either extend the existing agreement, or sign an interim agreement, until a new agreement is reached.

**8. How does the grievance procedure work?**

When a problem arises that cannot be resolved on the job, you have the right to file a grievance. If your agreement has a **“Grievance Procedure”** then there are clear steps that both your employer and Local/ADC must follow to resolve the grievance, including the formation of a Joint Arbitration Board. The Joint Arbitration Board is made up of BAC and Contractor representatives. It meets to resolve disputes and settle grievances. The grievance procedure also sets a timeframe for resolving disputes that can only be changed if both sides agree. The key steps in the grievance procedure, as outlined in the model “Grievance Procedure” language, include:

The Union and Contractor must be notified of the grievance within five (5) days of when the problem/contract violation occurred or was discovered. At this stage BAC’s steward and the employer’s representative have one day to try and resolve the problem.

If the steward and the employer’s representative **cannot** resolve the problem, then the next day it is turned over to the Local/ADC Officer and Contractor. The Local/ADC Officer and Contractor have three (3) working days to resolve the grievance.

If the Local/ADC Officer and Contractor are unable to resolve the grievance in this time frame, then it is turned over to the Joint Arbitration Board. The Joint Arbitration Board has five (5) working days to resolve the grievance.

If the Joint Arbitration Board is unable to resolve the dispute, then it is turned over to an impartial arbitrator and both the Union and the Contractor are required to accept the arbitrator’s decision.

**9. Who is the first person who should be contacted in the grievance procedure?**

When a problem arises on the job the first person a member should contact is the job steward. If there is not a steward on the job, then the members should call the Local/ADC office and ask to speak to their Local/ADC Officer.

#### **10. What is an example of a grievance?**

A member or the Local/ADC can file a grievance against an employer if the collective bargaining agreement is not being upheld or if a member is unfairly fired or disciplined. The following is an example of a situation in which a member could file a grievance for being unfairly dismissed:

Member X is assigned to work on a scaffold that has not been properly constructed – the scaffold is missing safety railings. Recognizing that this is a potentially hazardous situation, the member approaches the foreman and indicates that he cannot work on the scaffold until it is repaired. The foreman considers the member insubordinate and fires him. In this instance, the member could file a grievance for being wrongfully discharged.

Other examples of issues that members could file a grievance over, include: not being paid the wage required in the collective bargaining agreement, not receiving the correct fringe benefit contributions, and not being given the personal protective equipment specified in the agreement.

#### **11. Are you given back wages if you are unfairly fired?**

If a member is unfairly fired and files and wins a grievance then he or she may be entitled to back wages.

#### **12. Is there a way to speed up the grievance procedure?**

Strong grievance language in your collective bargaining agreement that specifies a time frame for each step in the grievance procedure will speed up the overall grievance process. If the time frame is not spelled out in your collective bargaining agreement then the grievance process could drag on indefinitely.

#### **13. Will there be an arbitrator on all disputes? Why do we have to accept an impartial final decision?**

No. The grievance will only go before an arbitrator if the grievance procedure in your collective bargaining agreement calls for one, and if your Local/ADC Officer and Contractor are unable to resolve the grievance within the time frame specified in the procedure. Under the model grievance procedure, if the Officer and Contractor cannot reach an agreement, the grievance is turned over to the Joint Arbitration Board. The Joint Arbitration Board has five (5) working days to resolve the grievance. If the Joint Arbitration Board is unable to resolve the dispute, then it is turned over to an impartial arbitrator and both the Union and the Contractor are required to accept the arbitrator's decision.

If your collective bargaining agreement contains language requiring an impartial arbitrator as a last resort, then both the union and employer have a legal obligation to accept the arbitrator's decision. Although the arbitrator may not always find in our interest, the arbitrator may not always side with the employer either. Without the impartial arbitrator, some grievances could drag on indefinitely.

**14. What is the benefit to members of having a no strike/no lockout provision? Is it just to keep us working?**

When a collective bargaining agreement includes a "no strike/no lockout" provision, both the Local/ADC and the Contractor have agreed that they will stay on the job and use the grievance procedure to resolve disputes concerning the agreement. This provision keeps members working, prevents Contractors from locking our members off of jobs and replacing them with non-union workers, and encourages both sides to resolve problems.

There are conditions under which a strike or lockout could still take place, however:

First, if an arbitrator rules in favor of the union on a grievance and the Contractor does not adopt the arbitrator's decision then the Union could go out on strike. The reverse of this is also true. If the Union does not adopt the arbitrator's decision the Contractor could lock its employees out.

Next, if the Contractor does not make all of the payments specified in the collective bargaining agreement (wages and fund contributions), then the Union is free to go out on strike.

**15. How is the steward chosen? Will a steward be appointed on all jobs?**

As one member noted in a chapter meeting discussion “What steward? In 2½ years I’ve never seen a steward.” This question, as well as the question of how a steward is chosen and if there will even be a steward on the job hinges on whether there is a steward clause in the collective bargaining agreement, and what the steward clause says. A strong steward clause, such as that recommended in the IU’s model language, gives BAC the right to place stewards on jobs, and these stewards have the authority to conduct union business on the job. This is why the Steward Clause is important.

**16. When do stewards identify themselves?**

BAC stewards should identify themselves to all BAC members as soon as possible after being appointed so members know who to go to if there is a problem.

**17. What power does the steward have? What is the steward’s main goal – job description?**

On the job, a BAC steward is both a worker and the Local/ADC union’s representative. In this capacity, the steward is responsible for educating members about the Union and responding to their questions or referring them to the Local/ADC ’s Principal Officer. In addition, they are called on to solve everyday job related problems and they serve as the first line of contact when a member identifies a problem on a job. The steward has the authority to bring these problems to the employer’s attention and to try and resolve them. When the steward cannot resolve a problem the Local/ADC ’s Principal Officer is contacted.

BAC’s Steward Training Program outlines in detail the role and responsibilities of a BAC steward. This training program is available to all members.

**18. If there’s no steward on the job and no journeyman wants the job, then what?**

If no member is willing to function as a steward on a job, then members should contact their Local/ADC Officer or field representative assigned to their area directly.

**19. Will the union stewards change from job to job?**

This will depend on the steward language in the collective bargaining agreement and the Local/ADC Officers. The IU is encouraging Local/ADC unions to provide steward training to all interested members so there will always be qualified members available to act as the job steward.

**20. What's to prevent a Contractor from putting all the stewards on one job?**

First, if the steward language in the collective bargaining agreement gives BAC the authority to appoint stewards then it will not be possible for a Contractor to designate everyone on a job as a steward. There is only one steward on any single job – the person assigned as a steward on one job may not be a steward on another job. If the Local/ADC provides steward training to enough members, and negotiates the steward clause into their agreement, then there will always be trained BAC members available to be assigned as stewards on jobs.

**21. Who enforces the traveling Contractors clause?**

The traveling Contractors clause is enforced by the Union and upheld by the courts. A Contractor signed to a collective bargaining agreement that contains a traveling Contractors clause is legally bound to that clause, as well as all other requirements in the agreement.

**22. What if the Contractors do not pay the high wage? If you go to another area with another Contractor that happens to get less money can't they just pick the cheapest?**

When an employer signs an agreement that contains a traveling Contractors clause, the employer is legally bound to pay BAC wages and benefits to its employees even when they work outside of the area covered by the Local/ADC agreement that they have signed.

If the agreement contains the model traveling Contractors language, then the Contractor agrees to pay the wages and benefits outlined in the BAC agreement that covers the job. If the job is in an area not covered by a BAC agreement, then the Contractor agrees to pay the wages and benefits outlined in your Local/ADC agreement to its employees. And if you travel with the Contractor he/she agrees to pay you: a) at least the minimum wage scale in your Local/ADC 's/ADC's agreement; or b) the minimum wage scale in the agreement covering the area that you've traveled to – whichever is greater.

The traveling Contractors clause prevents Contractors from traveling to other markets and paying the cheapest wage.

**23. Will there still be a split scale when traveling Contractors come into the area?**

It will depend on the agreement language negotiated. But if the model traveling Contractors clause recommended by the IU is used then there will not be a split scale.

**24. Will benefits follow the member?**

A member who travels to another BAC Local/ADC for work will receive benefit credits in his/her home Local/ADC for the hours worked if the Local/ADC in which he/she works is signed to a reciprocal agreement.

**25. What exactly does the traveling Contractors clause cover? How far does a member have to travel?**

The traveling Contractors clause applies to the Contractors. It requires a Contractor to pay BAC wages and benefits regardless of how far they travel. When a Contractor signed to this clause travels to another BAC Local/ADC's jurisdiction, members working in the Local/ADC benefit. And, if the Contractor is signed to BAC's model traveling Contractors clause, then BAC members that travel with the Contractor to a job are ensured a wage equal to at least the minimum wage rate in their home Local/ADC agreement, or the minimum wage scale in the agreement covering the work, whichever is greater.