A HISTORY AND EXPLANATION OF THE

STANDARD FORM OF UNION AGREEMENT

FOR THE

SHEET METAL INDUSTRY

THIRD EDITION

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FORWARD

This publication was originally authored by Robert J. Fenlon of the law firm of Felhaber, Larson, Fenlon & Vogt, P.A. The firm has represented SMACNA since 1945, and Bob Fenlon personally was directly involved in all Standard Form of Union Agreement negotiations which occurred since 1968 on behalf of SMACNA. He served as counsel at virtually all National Joint Adjustment Board (NJAB) hearings through 1994.

The second edition of the History and Explanation of the Standard Form of Union Agreement (SFUA) was written largely by Stephen J. Burton, of the Felhaber-Larson law firm. He provided labor counsel to SMACNA from 1977 through 2015 representing SMACNA at NJAB hearings and advising SMACNA's Labor Committee in the negotiation of the SFUA.

Four individuals collaborated to make changes to this third edition Jason Watson, SMACNA Executive Director of Labor Relations and Chair of the SMACNA Labor Committee and Management Co-Chair of the NJAB.

Joye Blanscett served as SMACNA's Director, Labor Services and Administrator of the NJAB from 2008 through 2023 and former SMACNA Executive Director of Labor Relations & Human Resources Deborah Wyandt. Ms. Wyandt has participated in all NJAB, Labor Committee Meetings and SFUA Negotiations from 1988 through 2020.

Julie Marnell served as SMACNA's Director, Labor Services and Administrator of the NJAB from 1989 through 2005 and rejoined the Labor Relations in July of 2023.

Dan Kelly of Felhaber-Larson has served as SMACNA outside labor counsel advising SMACNA's Labor Committee and NJAB members from 2015 through present.

It should be clearly understood that this document represents the opinions, interpretations and research of the above authors, who collectively have over 120 years' experience at the national level interpreting and negotiating the SFUA. This document has not been reviewed for concurrence by the Sheet Metal Workers' International Association (SMWIA, now SMART), nor does it carry the imprimatur of the National Joint Adjustment Board which has the ultimate responsibility to interpret the Standard Form of Union Agreement through the grievance procedure.

Hopefully this document will give SMACNA contractors and Chapter Executives a better understanding of the Standard Form of Union Agreement which is an extremely important factor in the labor relations of the sheet metal industry.

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HISTORY OF THE SFUA

The Standard Form of Union Agreement (SFUA) is a unique document. For about 25 years, it was developed by the Sheet Metal Workers International Association (SMART)[1] unilaterally and recommended to all of its local unions for adoption as the basic structure for a collective bargaining agreement (CBA). We understand that at one point in time local unions were required by a provision of the SMART constitution to adopt the current SFUA. That requirement does not exist today, but the document still is extremely important, and it has substantial impact on labor negotiations in the sheet metal industry. The SFUA serves as the basis for over 95 percent of all local industry CBAs. Even those CBAs that differ from the SFUA, incorporate many of the key provisions.

SMART local unions apparently considered the unilateral SFUA to be the Bible, contractors wanted the national association to get involved in the development of the format that was the basis of sheet metal contracts throughout the USA and Canada. In response to those concerns, the national parties met in 1946 and 1947 for the first time to discuss mutual problems and this led to an agreement that, after 1946, the SFUA should be negotiated by the national parties.

One of the major problems with the SFUA as it existed in 1947 had to do with the grievance procedure. It was a two-step procedure which provided for a Joint Adjustment Board and then an appeal procedure to a panel designated by the SMART and the local employer. If the panel did not resolve the issue the union was free to strike. Deadlocks were frequent and resulting work stoppages were costly. In 1955, a major breakthrough

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1 The SMWIA and the United Transportation Union merged in January of 2008 to form the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART). For consistency purposes, the SMWIA/SMART, both before and after the merger, will be referenced herein as the SMART.

was made when the National Joint Adjustment Board (NJAB) was established with full authority to resolve contract grievances. This change was initiated by SMACNA.

The grievance procedure in what is now Article X has been refined from time to time but has basically remained the same since the establishment of the NJAB. While the decisions of the Board have not always been enthusiastically acclaimed by the parties submitting their cases for judgment, there is certainly strong support for the proposition that the NJAB has helped to stabilize the industry by virtually eliminating strikes during the term of a labor agreement in the sheet metal industry. While a strike is still possible if the NJAB deadlocks over a grievance, deadlocks have been rare.

In 1963, an addendum to the SFUA was negotiated which established the legitimacy of local bargaining to provide for industry funds to support industry programs. It provided for contributions to the Industry Fund of the United States (IFUS) and to local industry funds. By 1966, the addendum was eliminated, and industry fund contributions have been provided for in the SFUA since that time. Industry fund contributions were a subject brought to the bargaining table by SMACNA. They have provided the funds necessary to fund labor relations, industry educational programs, technical research and other industry promotional efforts at the national and local levels.

In 1969, SMACNA approached SMART to establish a method of resolving deadlocked local negotiations to avoid strikes over contract renewal - i.e. interest arbitration. This was proposed against a background of inflationary settlements and frequent strikes during the 1960's. It was suggested that cooler heads away from the local scene might have a more analytical view of the issues free of emotional and local political pressures. The SMART was reluctant to become

involved but finally conceded to an addendum being produced which made the services of the NJAB available to local parties who adopted the procedure.

The City of Atlanta was the first area to try the new experiment. They had experienced three consecutive strikes over the previous several years at the times when the contract was open for negotiations. The attitude of sheet metal workers in Atlanta was that they needed time “to go fishing”. Work was plentiful and strikes were killing the industry in the eyes of its customers. Something different had to be done and both management and labor decided to try the new method.

In 1971, Article X, Section 8 was incorporated into the SFUA. As has been stated regarding the grievance procedures of Article X, the decisions of the NJAB have not always pleased the local parties. Once again, it can be said, however, that many costly strikes have been avoided. It can, also, be demonstrated that the economic results of decisions have very seldom committed sheet metal contractors to wage and fringe packages which exceed those of comparable skilled trades in the local geographic area.

Since interest arbitration is a permissive subject of bargaining, either the union or the employer has the right to refuse to include Article X, Section 8 in a subsequent agreement. A number of areas have done so and some who removed it have negotiated X-8 back into their agreement in a subsequent contract. Suffice it to say that having contract conditions imposed by others rather than mutually agreed upon back home is simply not as satisfying. It would, therefore, appear that Article X, Section 8 will always be controversial. It is, however, a tool to be used for those who believe it serves their best interests.

In the early 1990's, the NJAB adopted a new rule which required the parties to limit the unresolved issues to three from each party. This was done in an attempt to require serious bargaining before coming to the Board for help. Too often it was apparent that some areas were unwilling to accept the responsibility to resolve issues at home. Under the three-issue rule, the parties are required to bargain at the site of the Board meeting if they have not complied with the rule prior to their scheduled appearance.

This change in the rules has encouraged local bargaining and has substantially reduced the work load of the NJAB. This is exactly what the Board wanted to accomplish. It was never intended that X-8 would be a substitute for local bargaining.

Many other changes have been adopted over the past two decades. Some significant changes are the following:

1. Article I was revised first to include metal roofing within the scope of work.

2. Additionally, Article I subparagraph (d) was revised to clarify that preparation of field sketches whether manually drawn or computer assisted were included in covered work. A Memorandum of Understanding was executed by the chairs of the SMACNA and SMART Labor Committees clarifying that regional practices varied substantially throughout the country. The MOU provides "it was the understanding of the parties that this change is intended to reflect the existing situation in the industry." SMART would later use this subparagraph to claim work done for CAD, BIM and other 3D drawings.

3. Article V was revised to include language that grants the union the right to establish itself as the Section 9a representative of the workforce should they demonstrate to the association a majority support. This language eliminates the requirement for the union to have to conduct an NLRB election. SMART strongly encourages all local unions to adopt this language, while some SMACNA Chapters resist adding the language to their CBAs.

Because recognition language will result in a full Section 9a bargaining relationship, contractors will not be able to simply walk away from the union at contract expiration. From the stand point of the multi-employer bargaining group, that may be an advantage. Furthermore, in most circumstances, it is a foregone conclusion that the union would win any subsequent NLRB election. Therefore, it may be strategically better to address the language during the normal give and take of the bargaining process to enhance the opportunity to negotiate competitive conditions in exchange for the provision.

4. Article V was also revised to include a dues authorization provision which obligates signatory employers to remit union dues, including the SMART per-capita dues, as long as they have received a valid authorization from the employee.

5. Article VI was revised to allow more flexibility in establishing the workweek. Notably, it explicitly allowed for the establishment of four-ten-hour weeks by mutual consent of the union and employer.

6. Article VIII Section 4 was revised to exclude spiral pipe and fittings from the equalization requirements, except when such a provision is contained in "the" local union agreement. This revision also removed the old reference to "high-pressure pipe" because both SMACNA and the SMART agreed the term was outdated and therefore difficult to define. Interpretation of when spiral pipe requires equalization continues to be a point of contention between SMACNA and SMART. As of January 2019, SMACNA maintains that its notes from the SFUA negotiations which changed this section of the SFUA made it clear that the fabrication CBA determines whether equalization is required on spiral pipe and fittings. SMART issued a unilateral determination in 2010 maintaining that the jobsite CBA determines whether equalization is required.

7. Article VIII Sections 12 and 13 were revised in 2011, to permit IFUS and local industry fund contribution levels to be set by the fund trustees. This change effectively removed the need for the SMACNA Chapters to negotiate over employer contributions to their own local and national (IFUS) their industry funds that were previously used as a bargaining chip by some local unions.

8. Article VIII, Section 15 was likewise revised to allow the contribution level for ITI, NEMI and SMOHIT to be set by the fund trustees rather than the local parties.

9. Article XII was added to the SFUA in 2011 to encourage local parties to ensure basic journeyman upgrade training as well as to jointly establish a substance abuse program which includes, at a minimum, the following

components: owner mandated, reasonable suspicion, post-accident, and random drug and alcohol testing.

The most controversial recent changes in the SFUA from the standpoint of SMACNA chapters and members has been the adoption of the 9a recognition language. However, since recognition language will result in a Section 9(a) bargaining relationship, contractors will not be able to simply walk away at contract expiration. From the standpoint of the multi-employer group, that may be an advantage, in that it will be more difficult for contractors to pull out of the multi-employer group in the future and go non-union.

Furthermore, if it is a foregone conclusion that the union would win any subsequent election, one must assess what has been gained by denying the union's request for recognition language. Denying the union's request could adversely affect the bargaining relationship, and the union will be able to file a representation petition anyway, and obtain certification from the NLRB.

LEGAL EFFECT OF THE SFUA

It should be clearly understood that a SFUA is not a contract. It is a model form of agreement negotiated between SMACNA and the SMART. SMACNA does not hold bargaining rights for local chapters or contractors.

Thus, the inclusion of a new provision in the SFUA does not bind or force local bargaining units to include that provision in their local agreement. The provisions of the SFUA only become contractual when they are adopted by the local bargaining parties or included as a result of the interest arbitration provisions of Article X, Section 8.

It must also be understood that there is always the possibility that a unilateral SFUA could again be produced. This happened on one occasion many years ago as the result of a breakdown in SFUA negotiations between the national associations. Obviously, a unilateral document only carries the endorsement of the party issuing it.

In sum, the SFUA when published jointly stands as a model agreement which is recommended by the National Associations for local adoption. It is nothing more and nothing less.

AN EXPLANATION OF THE SFUA

The following is the authors' explanation of the contents of the SFUA. It should be noted that the SMART was not consulted about the commentary and they, as well as other parties, may disagree with the conclusions set forth in this explanation.

ARTICLE I

SECTION 1. This Agreement covers the rates of pay and conditions of employment of all employees of the Employer engaged in but not limited to the: (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all HVAC systems, air veyor systems, exhaust systems, and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air handling equipment and duct work; (d) the preparation of all shop and field sketches whether manually drawn or computer assisted used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches; (e) metal roofing; and (f) all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.

Commentary

This article sets forth the work jurisdiction covered by the contract and in connection with Article III commits the employer to assign that work to sheet metal workers. For employers of more than one craft, this can be the source of grievances if any of the covered work is assigned to other than sheet metal workers. It can also be the source of grievances if a straight sheet metal contractor subcontracts covered work without satisfying the subcontracting restrictions of Article II.

The most recent change in Article 1 is the addition of subparagraph (e), added in 2001, to include metal roofing in the scope of work.

Subparagraph (f) states that the contract will cover "all other work included in the jurisdictional claims of the Sheet Metal Workers International Association". This provision has existed in the SFUA since the 1940's. Obviously, this is a very broad

jurisdictional claim. If a contractor employs multiple crafts, the broad claim of jurisdiction can lead to jurisdictional disputes.

Employers who employ two or more crafts may be well advised to stipulate to the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry procedures to avoid being caught in the middle of conflicting claims for work assignments. If a contractor is stipulated, the building trades unions are, as of the date of this writing, prohibited from seeking damages for breach of contract for alleged misassignment of work. If a contractor is not stipulated, monetary damages under the grievance procedures of Article X can be pursued if the union believes they have a claim for work that has been assigned or subcontracted to others and the contractor could end up paying twice for the same work.

In the 1990's, some local labor agreements negotiated provisions which prohibit the signatory employers from stipulating to the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry. Since all crafts are now stipulated, it would seem to be totally inconsistent for local unions to bargain for procedures which would prohibit signatory employers from utilizing the Board to resolve these disputes. We are advised, however, that the Board would take jurisdiction of a dispute even though a local labor agreement restricted the contractor's right to submit the dispute to it for resolution. What is unknown is whether the contractor could be found in violation of the involved labor agreement which prohibits stipulation to the Plan and be confronted with an award of damages for that breach of contract.

Legal Developments

There have been four cases of significance which relate to Articles I and III.

The cases are:

1. In John Deklewa & Sons, 282 NLRB 184, 124 LRRM 1185 (1987), the NLRB held that pre-hire agreements [8(f) agreements] in the construction industry are enforceable until the agreement expires unless the employees vote to reject representation by the union in an NLRB conducted election. Following expiration of the agreement either party can refuse to bargain for a new agreement.

It should be noted, however, that if the agreement contains Article X, Section 8, the NJAB does have authority to reimpose a new agreement with respect to mandatory subjects of bargaining.

2. Sheet Metal Workers Local Union 91 (Schebler Co.), 905 F. 2d 417, 139 LRRM 1097, (decided June 7, 1989) involved the Integrity Clause which, as then drafted, was found to be illegal. This case held that it was unlawful to refuse to grant Resolution 78 relief to an employer because that employer had declined to sign the integrity clause. The Board held that the integrity clause was illegal because it allowed the union to cancel its agreement with a contractor, if the contractor had any ownership interest in a non-union sheet metal company. That constituted an illegal "hot cargo" agreement.

Based on Schebler, it appears to follow that it would be equally illegal to refuse to enter another agreement with an employer if the refusal was found to be for the purpose of

forcing the employer to change work assignments from one craft to another. Both fact situations represent coercion of an employer for an unlawful purpose.

3. The third decision of significance was Local 49 v. Los Alamos Constructors, U.S. Court of Appeals, Tenth Circuit, decided March 7, 1977, 550 F.2d 1258, 94 LRRM 2869.

The employer made an assignment to iron workers which the sheet metal workers grieved. The union processed the grievance under Article X and the NJAB awarded damages. The employer asserted that the matter should have been before the predecessor to the Plan for the Settlement of Jurisdictional Disputes because all three parties were stipulated.

The union filed an action to enforce the award which a trial court affirmed. However, the appeals court refused to enforce the decision because all three parties were stipulated and had contractually agreed to use the Plan to resolve this type of dispute.

4. The Seventh Circuit Court in Local 416 vs. Helgesteel Corp., (7th Cir. Chicago) decided December 27, 1974, 507 F.2d 1053, 88 LRRM 2254 involved a jurisdictional dispute between iron workers and sheet metal workers which resulted in an arbitration award for damages against the employer. Consistent with the Los Alamos Constructors case, the Seventh Circuit refused to enforce the award of money damages.

It would appear that Los Alamos and Helgesteel are still persuasive authority for the proposition that if all parties were stipulated to the Plan for the Settlement of Jurisdictional Disputes that that body ought to determine any and all jurisdictional disputes which occur. In addition, we are advised that the reconstituted jurisdictional board will

intervene in any court proceedings to attempt to restrain the enforcement of damage awards obtained by reason of a jurisdictional dispute.

ARTICLE II

SECTION 1. No Employer shall subcontract or assign any of the work described herein which is to be performed at a jobsite to any contractor, subcontractor or other person or party who fails to agree in writing to comply with the conditions of employment contained herein including, without limitations, those relating to union security, rates of pay and working conditions, hiring and other matters covered hereby for the duration of the project.

SECTION 2. Subject to other applicable provisions of this Agreement, the Employer agrees that when subcontracting for prefabrication of materials covered herein, such prefabrication shall be subcontracted to fabricators who pay their employees engaged in such fabrication not less than the prevailing wage for comparable sheet metal fabrication, as established under provisions of this Agreement.

Commentary

Section 1 applies to subcontracting of work covered in Article I at a job site. It literally requires the subcontractor to agree in writing to adhere to the terms of the local agreement in the area which covers the work site.

Section 2 applies to subcontracting fabrication away from the job site of items that are covered by Article I. This provision does not require that the subcontractor be signatory to the local agreement as is the case with Section 1, but it does require that the subcontractor pay the employees involved in the fabrication not less than the prevailing wage established under the local agreement.

It should be understood that all subcontracting of work which is not to be performed at the job site is subject only to Section 2, which means that a subcontractor cannot legally be required to be signatory to the local agreement.

The term “prevailing wage” has been defined through decisions of the NJAB as well as panel and local Joint Adjustment Board decisions to include the value of all hourly

contributions in addition to the hourly wage rate. The definition of "wage scale" contained in Article VIII, Section 7, has been applied. Thus, the value of all hourly contributions, except industry funds, is added to the basic wage rate.

ARTICLE III

SECTION 1. The Employer agrees that none but journeymen, apprentice, preapprentice and classified sheet metal workers shall be employed on any work described in Article I and further, for the purpose of proving jurisdiction, agrees to provide the Union with written evidence of assignment on the Employer's letterhead for certain specified items of work to be performed at a jobsite prior to commencement of work at the site. List of such specific items, which may be revised from time to time, as agreed to by and between SMACNA and SMART shall be provided to the Employer.

Commentary

This section establishes the classifications of employees who can perform the work covered by Article I. Unless a local addendum modifies Article III by creating more or less classifications of workers to perform that work, it means that all of the work must be performed by journeymen, apprentices, preapprentices and classified workers.

The article also requires that, with respect to certain previously agreed upon items, a written statement of assignment of that work on the employer's letterhead must be forwarded to the union prior to the commencement of that work. There is a form that has been designed by the International Union and SMACNA for that purpose. The intent behind this requirement is that it will establish evidence of work jurisdiction in the event there are jurisdictional disputes between SMART and other building trades unions.

The Plan for the Settlement of Jurisdictional Disputes in the Construction Industry requires the contractor to make an assignment of work, and the contractor may not change an assignment once it has been made, unless directed to do so under the Plan. There is no special form in which an assignment is to be made; however, the Plan does make it clear

that the mere delivery of materials to a job site is not an "assignment" for the purposes of determining who will install the materials.

ARTICLE IV

SECTION 1. The Union agrees to furnish upon request by the Employer duly qualified journeymen, apprentice, preapprentice, and classified sheet metal workers in sufficient numbers as may be necessary to properly execute work contracted for by the Employer in the manner and under the conditions specified in this Agreement.

Commentary

This article is the union's commitment to furnish the employer with sufficient qualified journeymen, apprentices and preapprentices and classified workers to complete the work that the employer contracts to perform. It is the other half of the bargain set forth in Article III which requires the employer to do that work with employees in those classifications to the exclusion of all others.

While the Standard Form or Union Agreement does not address what an employer can do if the union does not furnish sufficient journeymen or apprentices to perform the work required, it would appear reasonable to conclude that an employer would have the right, after affording the union reasonable opportunity to supply manpower, to hire off the street. As a matter of fact, many local agreements have negotiated specific provisions granting the employer that right. The SFUA expressly gives the employer the right to hire directly if the union does not furnish a preapprentice or classified worker within forty-eight (48) hours. [See Articles XII and XIII.]

ARTICLE V

SECTION 1. The Employer agrees to require membership in the Union, as a condition of continued employment of all employees performing any of the work specified in Article I of this Agreement, within eight (8) days following the beginning of such employment or the effective date of this Agreement, whichever is the later, provided the Employer has reasonable grounds for believing that membership is available to such employees on the same terms and conditions generally applicable to other members and

that membership is not denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining membership.

SECTION 2. The Union may request recognition as the exclusive collective bargaining agent for all employees employed by the Employer in the classifications and geographic jurisdiction covered by this Agreement, whether or not they are members of the Union. In determining whether the union has the support of a majority of the Employer's employees, such showing may be based upon either a majority of those employed at the time such recognition is requested, or, a majority of those eligible to vote under the National Labor Relations Board's Steiny-Daniel formula. No later than 10 days following the Union's request, the Employer shall review employees' authorization cards submitted by the Union in support of its claim to represent and have the support of a majority of such employees. If a majority of the employees has designated the Union as their exclusive collective bargaining representative, the Employer will recognize the Union as such majority representative of all employees in the classifications and geographic jurisdiction covered by this Agreement. The Employer shall not file or cause the filing of a petition for election or unfair labor practice charge with the National Labor Relations Board in connection with any demands for recognition provided for here. Article X of this Agreement shall be the sole and exclusive means of resolving any dispute concerning this provision.

SECTION 3. If during the term of this Agreement the Labor Management Relations Act of 1947 shall be amended by Congress in such manner as to reduce the time within which an employee may be required to acquire union membership, such reduced time limit shall become immediately effective instead of and without regard to the time limit specified in Section 1 of this Article.

SECTION 4. The provisions of this Article shall be deemed to be of no force and effect in any state to the extent to which the making or enforcement of such provision is contrary to law. In any state where the making and enforcement of such provision is lawful only after compliance with certain conditions precedent, this Article shall be deemed to take effect as to involved employees immediately upon compliance with such conditions.

SECTION 5. The Employer agrees to deduct the appropriate amount for dues, assessment or service fees (excluding fines and initiation fees) from each week's pay of those employees who have authorized such deductions in writing, irrespective of whether they are Union members. Not later than the 20th day of each month, the Employer shall remit to the designated financial officers of the Sheet Metal Workers' International Association and the Local Union the amount of deductions made for the prior month, together with a list of employees and their social security numbers for whom such deductions have been made.

Commentary

Section 1 is a union shop provision which requires membership as a condition of employment for any new hire within eight (8) days following the beginning of employment. If an employee refuses to meet the financial obligation of paying those fees that can be lawfully required by the union, the employee is subject to dismissal from employment at the demand of the union.

The eight (8) day union shop provision is unique to the construction industry. Section 8(f), of the National Labor Relations Act specifically provides that for employees in the construction industry, membership can be required after seven days of employment. A manufacturing labor agreement can only require membership as a condition of employment after 30 days.

In 2011, a new section 2 was added to Article V providing for method to convert the collective bargaining agreement from a Section 8(f) bargaining agreement to a Section 9(a) agreement. This language is often referred to as "recognition language." However, the grant of recognition still requires the bargaining parties take the next step of the union demonstrating majority support to the local association before the conversion is complete.

Section 3 provides that the contract shall be automatically amended if Congress should, in the future, allow a requirement of compulsory union membership in a shorter period of time. This language relates back to the time prior to the enactment of the Taft-Hartley Act in 1947 when a closed shop which required union membership prior to hire was legally acceptable. The probability of that type of union membership requirement being legitimized in the future is highly unlikely.

Section 4 is only applicable in right to work states where local state law makes compulsory union membership requirements illegal. Local counsel should be consulted if you have any questions regarding the effect of such a prohibition because there are a variety of right to work laws in different states which have impact on the issue of enforcement of financial obligations to a union.

It should be understood that the NLRA only permits the enforcement of the financial obligations of union membership as a condition of employment. Thus, if an individual, for whatever personal reason, does not want to be a member of the union but is willing to pay the required union dues and the initiation fees which are uniformly required as a condition of acquiring or retaining membership, the employee satisfies the legal requirements of a union shop. (Section 8(a)(3) of the National Labor Relations Act.) Such employees are referred to as "financial core" members and they are not subject to discharge for failure to become full union members.

Some employees may object to certain types of expenditures by the union such as political expenditures. These employees can only be obligated to pay costs related to the negotiation and administration of the collective bargaining agreement. The union is obligated to advise its membership of the breakdown of those costs and the extent of their obligation under the law.

Section 5, added in 2005, requires employers to deduct dues upon receipt of a valid dues authorization from employees. In 2011, this language was revised to clearly encompass SMART per-capita dues within the dues check-off language.

ARTICLE VI

SECTION 1. The regular working day shall consist of _____ (_____) hours labor in the shop or on the job between eight (8) a.m. and five (5) p.m. unless modified in local negotiations and the regular working week shall consist of five (5) consecutive _____ (_____) hour days labor in the shop or on the job, beginning with Monday and ending with Friday of each week. All full time or part time labor performed during such hours shall be recognized as regular working hours and paid for at the regular hourly rate. Except as otherwise provided pursuant to Section 4 of this Article, all work performed outside the regular working hours and performed during the regular work week, shall be at _____ (_____) times the regular rate. Where conditions warrant, the regular work day may consist of ten (10) hours labor on the job and the regular work week of four (4) ten (10) hour days between Monday and Friday when mutually agreed between the Local Union and Employer.

A make-up day may be scheduled for work missed due to inclement weather, when mutually agreed between the Local Union and Employer. The make-up hours shall be paid at the regular hourly rate of pay.

Employees shall be at the shop or project site at scheduled starting time each day and shall remain until quitting time.

SECTION 2. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day or days locally observed as such, and Saturday and Sunday shall be recognized as holidays. All work performed on holidays shall be paid as follows:

SECTION 3. It is agreed that all work performed outside of regular working hours during the regular work week and on holidays shall be performed only upon notification by the Employer to the Union in advance of scheduling such work. Preference on overtime and holiday work shall be given to employees on the job on a rotation basis so as to equalize such work as nearly as possible.

SECTION 4. Shift work and the pay and conditions therefore shall be only as provided in written addenda attached to this Agreement. Energy conservation—Retrofit work performed outside the regular work day in occupied buildings shall be performed under shift work conditions to be established by the local parties or by the National Joint Adjustment Board on the request of either party, if not locally provided.

Commentary

Section 1 is in outline form the basis for establishing the work day and work week in a local agreement. It suggests an eight (8) a.m. to five (5) p.m., Monday

through Friday, work week with overtime to be paid as agreed locally for hours outside of that work week. In 2001, it was amended to permit greater flexibility for scheduling the workday and workweek, including four tens.

The ability to schedule a make-up day for inclement weather to be paid at straight time was added in 2005. The make-up day required mutual agreement between the union and employer.

Section 2 is the holiday provision. It suggests that the six (6) standard holidays plus Saturday and Sunday will be considered as holidays and no work will be performed except under economic conditions to be established locally. Historically, those conditions usually required the payment of double time. There is, however, a significant movement toward the payment of time and one-half for overtime and for makeup days at straight time on Saturday.

Section 3 requires notice to the union in advance of scheduling overtime work. It also requires preference for overtime and holiday work to be given to the employees on the job on a rotating basis in order to equalize work opportunities. Apparently, the term “on the job” would mean at a work site or in the shop. Thus, the crew working on a job site would rotate overtime unless all of the crew were required to work. Similarly, the crew working on fabrication in the shop would rotate overtime for the purpose of equal distribution.

Section 4 requires that shift work conditions be established locally for “Energy Conservation-Retrofit work performed outside the regular work day in occupied buildings”. It also provides that if the local parties are unable to agree on shift work conditions for that type of work the NJAB will, on request of either party,

establish those conditions, if this language is included in the local labor agreement. The Board has the authority to resolve this issue even if the agreement does not contain Article X, Section 8.

ARTICLE VII

SECTION 1. When employed in a shop or on a job within the limits of _____ 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.

Commentary

This article covers travel provisions.

Section 1 intends to leave to the local parties the establishment of a free zone within the geographic area covered by the contract which is usually defined by miles from a center point or by reference to specific counties. In some local areas, the free zone consists of the entire geographic area covered by the contract.

Section 2 governs when an employee is employed outside of the free zone established by Section 1 but within the jurisdiction of the local union. In that

instance, the employees are to provide transportation for themselves to the boundary of the free zone established in Section 1. The employee is to arrive at that boundary at the regular starting time and must return to the limit of the free zone at quitting time with all transportation from the limit and back to the free zone limit to be provided by the employer or paid for by the employer. The section also offers the alternative of an hourly zone method of payment.

This article, based on differing conditions, requires local adaptation by way of addendum. Therefore, its only value to local parties is that it suggests the items that may need to be addressed, i.e. free zone, zone pay, and/or travel expense. It should be noted that travel arrangements in a local agreement may not be extended beyond the jurisdictional limits of that agreement. When employees are sent outside the jurisdiction of the local union, the provisions of the labor agreement at the job site have to be taken into consideration.

ARTICLE VIII

SECTION 1. When employed in a shop or on a job within the limits of _____ 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.

Commentary

For this section, the term “rate of wages” includes the hourly wage rate and deductible fringes such as contributions to a vacation fund on behalf of the employee. It does not include the cost of fringes that are excluded from the taxable wage rate such as health and welfare and pension contributions.

The second paragraph of section 2 was added to the Standard Form in 2005, in order to clarify the intent behind the travel provisions as being to compensate employees fairly rather than create barriers or place contractors at a competitive disadvantage.

ARTICLE VIII (continued)

SECTION 2. On all work specified in Article I of this Agreement, fabricated and/or assembled by journeymen, apprentices, preapprentices and/or classified sheet metal workers within the jurisdiction of this Union, or elsewhere, for erection and/or installation within the jurisdiction of any other collective bargaining areas or local union affiliated with Sheet Metal Workers' International Association, whose established wage scale is higher than the wage scale specified in this Agreement, the higher wage scale of the jobsite Union shall be paid to the employees employed on such work in the home shop or sent to the jobsite.

Commentary

Section 2 uses the term “wage scale” rather than “wage package”, but the definition of wage scale is set forth in Section 7 of Article VIII and it is the same as the definition used in referring to a wage package. It includes the wage rate and applicable hourly contract benefits (and does not include industry funds).

This means that the contractor must compare the wage scale for the job site local area with the wage scale established in his local area agreement. If the job site wage scale is higher, the difference is added to wage rate of each sheet metal worker employed on that fabrication.

The intent of Section 2 is that the contractor is obliged to equalize the wage package as defined. Equalization does not affect apprentice ratios, shift rates or overtime provisions. There is national authority for the proposition that these items are governed by the local agreement where the fabrication is accomplished.

> **Example 1** - Fabrication is scheduled to be performed for installation at a job site with a lower wage package ("Wage package" for this explanation includes the wage rate and all contractual fringe payments. It does not include industry fund contributions.)
>
> Assume the wage package in the home local is $35.00 per hour and the job site package is $28.00.
>
> Under this illustration employees performing fabrication will continue to be paid the higher wage package required in the home local.
>
> **Example 2** - Fabrication is to be performed for installation at a job site having a higher wage package.
>
> Assume the wage package difference is the reverse of Example 1, i.e., $28.00 in the home local and $35.00 at the job site.
>
> The contractor is required to pay the difference in the wage package of $7.00 per hour to the sheet metal workers who fabricate the material for installation at the job site.

ARTICLE VIII (continued)

SECTION 3. The provisions of Section 2 of this Article, Section 2 of Article II and Section 1 of Article III shall not be applicable to the manufacture for sale to the trade or purchase of the following items:

1. Ventilators
2. Louvers

3. Automatic and fire dampers
4. Radiator and air conditioning unit enclosures
5. Fabricated pipe and fittings for residential installations and light commercial work as defined in the locality
6. Mixing (attenuation) boxes
7. Plastic skylights
8. Air diffusers, grilles, registers
9. Sound attenuators
10. Chutes
11. Double wall panel plenums
12. Angle rings

SECTION 4. The provisions of Section 2 of this Article shall not be applicable to AIR POLLUTION CONTROL SYSTEMS fabricated for the purpose of removing air pollutants, excluding air conditioning, heating and ventilating systems. In addition, the provisions of Section 2 of this Article will not be applicable to the manufacture of spiral pipe and fittings, except when such a provision is contained in the local union agreement or addendum to the SFUA

Commentary

Sections 3 and 4 establish exceptions to the higher wage package obligations of Section 2. Section 3 provides for manufactured items or so-called purchase items as they are listed which can be purchased from any source. Section 4 makes an exception for air pollution control systems. Under Section 4, air pollution control systems can be fabricated without any obligation to equalize the wage package.

With the advent of manufacturing agreements which cover spiral pipe and fittings for all types of systems, the language excluding “high pressure systems” was removed from the standard form and has instead reference is now made to “spiral pipe.” In addition, the following was added, “the provisions of Section 2 of this Article will not be applicable to the manufacture of spiral pipe and fittings, except when such a provision is contained in the local union agreement or addendum to the SFUA.” It is SMACNA’s position that this language means a

manufacturer looks to its home agreement to determine whether the obligation to wage equalize exists on spiral pipe. The SMART has taken a contrary position asserting that the jobsite local's collective bargaining agreement's provisions control. Extensive negotiations have occurred in recent years between SMACNA and SMART. However, to date they have not resolved their differences.

ARTICLE VIII (continued)

SECTION 5. Except as provided in Sections 2 and 6 of this Article, the Employer agrees that journeymen, preapprentice and classified sheet metal workers hired outside the territorial jurisdiction of this Agreement shall receive the wage scale and working conditions of the local Agreement covering the territory in which such work is performed or supervised.

SECTION 6. When the Employer has any work specified in Article I of this Agreement to be performed outside of the area covered by this Agreement and within the area covered by another Agreement with another local union affiliated with the Sheet Metal Workers' International Association, and qualified sheet metal workers are available in such area, the Employer may send no more than two (2) sheet metal workers per job into such area to perform any work which the Employer deems necessary, both of whom shall be from the Employer's home jurisdiction. All additional sheet metal workers shall come from the area in which the work is to be performed. Journeymen sheet metal workers covered by this Agreement who are sent outside of the area covered by this Agreement shall be paid at least the established minimum wage scale specified in Section 1 of this Article but in no case less than the established wage scale of the local Agreement covering the territory in which such work is performed or supervised, plus all necessary transportation, travel time, board and expenses while employed in that area, and the Employer shall be otherwise governed by the established working conditions of the local Agreement. If employees are sent into an area where there is no local Agreement of the Sheet Metal Workers' International Association covering the area then the minimum conditions of the home local union shall apply.

SECTION 7. In applying the provisions of Sections 2, 5, and 6 of this Article VIII, the term "wage scale" shall include the value of all applicable hourly contractual benefits in addition to the hourly wage rate provided in said Sections.

Commentary

Section 6 sets forth the two-man rule which means that only two sheet metal workers may be sent to a job outside of your home local if sufficient additional

qualified employees are available at the job site. The two employees must be from your home local union. All other sheet metal workers are to be hired from the area in which the work is to be performed. It also requires that the two men be paid "all necessary transportation travel time, board, and expenses while employed in that area". Whether sheet metal workers who are designated as supervisors who do not work with the tools are included in the two-employee limitation is open to interpretation.

TRAVEL PAYMENTS

Section 6, in addition to establishing the appropriate wage package to be paid to sheet metal workers traveling to work in another area, requires the payment of "all necessary transportation, travel time, board and expenses".

The first principal to keep in mind is that travel expenses and travel pay cannot be extended beyond the geographic area covered by your home local agreement. Therefore, when employees travel to an out-of-area job site, they must be paid whatever travel expenses your contract requires until they reach the geographic limit of the contract. Any travel expenses or travel pay within the job site geographic area is controlled by the labor agreement in that area.

Since travel provisions vary considerably across the country, it is not possible to give a simple explanation of how the employees traveling under the two-man rule are to be compensated for travel. It would be most interesting to review the experience of various areas of the country in this regard.

The NJAB and national parties have discouraged and, in one instance, refused to enforce local travel provisions that place traveling contractors at a

serious economic disadvantage in bidding for work. The NJAB a number of years ago refused to enforce contract language that assigned a traveling contractor a free zone center in a remote corner of the union jurisdiction. It was clear in that case that the local parties were simply trying to make it impractical for an out of area contractor to compete with local contractors.

Where travel occurs to job sites far removed from an employee's home local, the travel arrangements are probably not a problem. In these circumstances, the employees are usually sent in to supervise the project and are, therefore, key to the success of the job. Reasonable travel arrangements are necessarily, under those circumstances, worked out between the contractor and the employees.

> **Example 1** - The home local contract pays mileage of 28¢ a mile beyond a 30 mile free zone from the union hall or the employee's home if the home is closer to the job site.
>
> The employees sent into the adjoining local under the two-man rule are paid mileage outside the appropriate free zone until they reach the geographic limit and then are paid any travel expense, zone pay or subsistence that may be required under the job site local agreement.
>
> **Example 2** - Same facts as Example 1, but the job site local agreement provides for no travel pay or expenses. The employees are required to appear at the job site at starting and leave at quitting time without any reimbursement for travel.
>
> The contractor is only required to pay mileage for travel to the men sent from their home local up to the geographic limits of the home local agreement.
>
> **Example 3** - Same facts as Example 1, except that job site local has zone wage rates which pay an additional wage increment to compensate for travel expenses.
>
> The answer is not an easy one because this issue has never been before the NJAB to the knowledge of the author. It would, however, seem reasonable to equalize the wage package between the areas

initially by excluding the zone wage increments. The contractor would then be required to pay the higher of the zone pay increment or the travel expense paid to the employees under the home local contract. This would assure that the traveling contractors had no economic advantage over local contractors and that the traveling employees are treated equitably.

Example 4 - Same facts as Example l, but the traveling contractor finds that the job site local agreement establishes a travel point for out-of-town contractors that is obviously intended to be a fence to make outside contractors noncompetitive.

There is precedent for the proposition that the NJAB will not enforce agreements that unfairly discriminate against out-of-area contractors. It is founded in the proposition that contractors agree to union obligations on a national basis when they agree to the traveling conditions of the SFUA. Having done so, the national parties who negotiate those conditions should exert all of their influence to be certain traveling contractors are given reasonable opportunity to compete when doing business throughout the country.

Section 7, as previously stated, defines the term “wage scale” to include applicable hourly contract benefits and the hourly wage rate.

Legal Developments

The U.S. Court of Appeals, Ninth Circuit decided the case of McKinstry Company v. Local 16, 859 F.2d 1382, 129 LRRM 2781 on October 20, 1988.

This case involved an interpretation of Article VIII, Section 6. The question was whether the contractor could be required to apply the wage and working conditions of the job site local union agreement in performing work outside of the geographic jurisdiction of the employer’s home local union. The employer took the position that it did not have a contractual relationship with the local union in which the job site was located. On that basis, it attempted to have an arbitration award under Article X set aside. The court clearly found that the employer was obliged under Article VIII, Section 6, to adhere to the established working conditions of the

job site labor agreement. This decision put to rest any argument concerning the enforceability of the extra-territorial obligations established by the SFUA. The result was not surprising to anybody familiar with the SFUA.

The travel provisions of Article VIII, Section 6, were inserted at the request of SMACNA contractors who wanted the right to draw upon manpower from the various sheet metal workers' local unions throughout the country when they obtained contracts outside of their jurisdiction. Prior to the inclusion of this language which gave them contractual rights, traveling contractors were often faced with total lack of cooperation when they attempted to call for manpower outside of their home local union's jurisdiction.

Signatory contractors and chapters should realize that when they adopt the Standard Form language regarding traveling contractor obligations they are, in fact, signing what amounts to a nationwide agreement with specified rights and obligations.

ARTICLE VIII (continued)

SECTION 8. Welfare benefit contributions shall not be duplicated.

When sheet metal workers are employed temporarily outside the jurisdiction of their home local union, the parties signatory to this Agreement agree to arrange through the Health and Welfare Trust Fund to transmit health and welfare contributions made on behalf of the employee to the Health and Welfare Trust Fund in the employee's home local union.

The parties to this Agreement agree to establish a system for continuing health and welfare coverage for employees working temporarily outside the jurisdiction of the local collective bargaining agreement when health and welfare contributions are transmitted on their behalf by trust funds from other areas.

When sheet metal workers are temporarily employed outside the jurisdiction of their home local union, the parties signatory to this agreement shall arrange to transmit any 401(k) contributions required to be made to a 401(k) plan where the

work is performed to a 401(k) plan established for the employee's home local union, and/or to the National Supplemental Savings Fund.

This obligation is conditioned upon a suitable reciprocity arrangement being agreed to by the trustees of such plans.

Commentary

This section provides for reciprocity between health and welfare trusts with respect to sheet metal workers who are temporarily employed outside of the jurisdiction of the home local. It requires that the Health and Welfare Trust Fund at the construction site arrange to transmit health and welfare contributions to the health and welfare fund in the employee's home local union and requires the home local health and welfare trust to continue to cover employees temporarily working out of the jurisdiction.

This does not apply to employees traveling under the two-man rule. Since they are employed by a contractor from their own local area, the contractor is required to contribute to the health and welfare fund at home on their behalf.

Payment of 401k benefits to the employee's home local was added to this section in 2005. As was the provision that a suitable reciprocity agreement between the funds must exist for there to be an obligation.

The reciprocity requirement came about by reason of travelers hired outside of their home local having difficulty with interrupted coverage where waiting periods may be required to qualify for benefits outside of the employee's home local. Conceptually, Section 8 would require and permit continuity of coverage.

ARTICLE VIII (continued)

SECTION 9. Wages at the established rates specified herein shall be paid in the shop or on the job at or before quitting time on of each week, and no more than two (2) days' pay will be withheld. Alternative payroll procedures, i.e.,

electronic and/or automatic deposit may be negotiated locally. However, employees when discharged shall be paid in full.

SECTION 10. Journeymen, apprentice, preapprentice and classified sheet metal workers who report for work by direction of the Employer, and are not placed to work, shall be entitled to two (2) hours' pay at the established rate. This provision, however, shall not apply under conditions over which the Employer has no control.

SECTION 11. Each Employer covered by this Agreement shall employ at least one (1) journeyman sheet metal worker who is not a member of the firm on all work specified in Article I of this Agreement. However, it will be permissible for an owner-member to be the journeyman sheet metal worker.

Commentary

Section 9 outlines the necessity of providing for payday and pay arrangements. It was modernized in 2001 to permit by permitting electronic or automatic deposit. This is subject to modification for local conditions.

Section 10 provides for a two-hour call-in pay when a sheet metal worker reports for work as directed and then is not put to work.

Section 11 requires that the employer employ at least one journeyman sheet metal worker who is not a member of the firm, i.e., an owner. It was clarified in 2005, that an owner-member would satisfy the obligation.

ARTICLE VIII (continued)

SECTION 12(a). Contributions provided for in Section 12(b) of this Article will be used to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the Sheet Metal Industry, improve the technical and business skills of Employers, stabilize and improve Employer Union relations, and promote, support and improve the employment opportunities for employees. No part of any such payments, however, shall be used for any other purpose except as expressly specified above.

(b). The Employer shall pay the Sheet Metal and Air Conditioning Contractors' National Industry Fund of the United States (IFUS) the hourly contribution rate established by the IFUS trustees. The IFUS trustees shall notify the Sheet Metal Workers' International Association of any changes to the established contribution rate prior to such change becoming effective. The

Employer shall contribute said amount for each hour worked on and after the effective date of this Agreement by each employee of the Employer covered by this Agreement. Payment shall be made on or before the 20th day of the succeeding month and shall be remitted to IFUS, 4201 Lafayette Center Drive, Chantilly, Virginia 20151-1219, or for the purpose of transmittal, through .

(Name of local remitting organization)

(c). The IFUS shall submit to the Sheet Metal Workers' International Association not less often than semi annually written reports describing accurately and in reasonable detail the nature of activities in which it is engaged or which it supports directly or indirectly with any of its funds. One time per year, the IFUS shall include in such written report a financial statement attested to by a certified public accountant containing its balance sheet and detailed statement of annual receipts and disbursements. Further specific detailed information in regard to IFUS activities or its receipts and/or expenditures shall be furnished to the Sheet Metal Workers' International Association upon written request.

(d). Grievances concerning use of IFUS funds for purposes prohibited under Section 12(a) or for violations of other subsections of this Section may be processed by the Sheet Metal Workers' International Association directly to the National Joint Adjustment Board under the provisions of Article X of this Agreement. In the event such proceeding results in a deadlock, either party may, upon ten (10) days' notice to the other party, submit the issue to final and binding arbitration. The Arbitrator shall be selected by the Co Chairmen of the National Joint Adjustment Board. The Arbitrator shall be authorized to impose any remedial order he deems appropriate for violation of this Section, including termination of the Employer's obligation to contribute to the IFUS. The authority of the Arbitrator is expressly limited to a determination of a deadlocked issue under this Section, (Section 12, Article VIII), and no other.

SECTION 13(a). Contributions provided for in Section 13(b) of this Article will be used to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the Sheet Metal Industry, improve the technical and business skills of Employers, stabilize and improve Employer Union relations, and promote, support and improve the employment opportunities for employees. No part of any such payments, however, shall be used for any other purpose except as expressly specified above.

(b). The Employer shall pay to the

(Name and address of local industry fund)

the hourly contribution rate established by the trustees of such local industry fund. The trustees of the local industry fund shall notify the local union of any changes to the established contribution rate prior to such change becoming effective. The Employer shall contribute said amount for each hour worked on and after the effective date of this Agreement by each employee of the Employer

covered by this Agreement. Payment shall be made monthly on or before the 20th day of the succeeding month.

(c). The local industry fund shall furnish to the Business Manager of the Union, not less often than semi annually, written reports describing in reasonable detail the nature of activities in which it is engaged or which it supports directly or indirectly with any of its funds. One time per year, the local industry fund shall include in such written report, a statement attested to by a certified public accountant and containing its balance sheet and detailed statement of receipts and disbursements. Further specific detailed information in regard to local industry fund activities or its receipts and/or disbursements shall be furnished to the Business Manager of the Union upon his written request.

(d). Grievances concerning use of local industry fund monies to which an Employer shall contribute for purposes prohibited under Section 13(a) or for violations of other subsections of this Section shall be handled under the provisions of Article X of this Agreement. The National Joint Adjustment Board shall be authorized to impose any remedial order for violation of this Section, including termination of the Employer's obligation to contribute to the local industry fund.

SECTION 14. The Union and Employer recognize that the contributions provided in Sections 12(b) and 13(b) of this Article support activities that benefit the entire sheet metal industry. It is essential that the Employer support these activities, even though it may be performing sheet metal work under the provisions of a separate project agreement or maintenance agreement.

Therefore, hours worked for purposes of determining the contributions required under Sections 12(b) and 13(b) of this Article shall include all hours worked by each employee of the Employer under any project agreement or maintenance agreement, unless specifically excluded by the terms of a written addendum that is negotiated by the Contractors' Association and the Local Union that are parties to this Agreement.

Commentary

Section 12 provides for contributions to the IFUS. Section 13 provides for contributions to a local industry fund. In 2011, these sections were amended to provide that the contribution will be in the amount established by fund trustees. The purposes of both of the industry funds are identical. Section 12(c) and 13(c) require written reports describing the activities and the financial reports be furnished to the union. The essence of this requirement is that the union be

advised of how the funds are being applied to accomplish the purposes of industry funds.

Section 12(d) and 13(d) permit grievances to be filed if the funds are used for purposes prohibited or for other violations of these sections of the agreement.

Section 14 was added in 2001. It is intended to make clear the obligation of signatories to contribute to IFUS and local industry funds on hours worked under project labor agreements and maintenance agreements.

ARTICLE VIII (continued)

SECTION 15. Effective as of the date of this Agreement, the Employer shall contribute to the International Training Institute for the Sheet Metal and Air Conditioning Industry (ITI) the hourly contribution rate established by the ITI Trustees. Such amount shall be contributed for each hour worked by each employee of the Employer covered by this Agreement. In the event that such hourly contribution rate is changed during the term of this Agreement, such change shall become effective during the next anniversary date of this Agreement. Payment shall be made on or before the 20th day of the succeeding month and shall be remitted as designated by the Trustees of the ITI, or, for purposes of collection and transmittal electronically or through .
(Name of local transmittal office)

Effective as of the date of this Agreement, the Employer shall contribute to the National Energy Management Institute Committee (NEMIC), the hourly contribution rate established by the NEMIC Trustees. Such amount shall be contributed for each hour worked by each employee of the Employer covered by this Agreement. In the event that such hourly contribution rate is changed during the term of this Agreement, such change shall become effective during the next anniversary date of this Agreement. Payment shall be made on or before the 20th day of the succeeding month and shall be remitted as designated by the Trustees of the NEMIC, or, for purposes of collection and transmittal electronically or through .
(Name of local transmittal office)

Effective as of the date of this Agreement, the Employer shall contribute to the Sheet Metal Occupational Health Institute Trust (Institute) the hourly contribution rate established by the Institute's Trustees. Such amount shall be contributed for each hour worked by each employee of the Employer covered by this Agreement until the Institute Trustees determine that the Trust is financially self sufficient. In the event that such hourly contribution rate is changed during the term of this

Agreement, such change shall become effective during the next anniversary date of this Agreement. Payment shall be made on or before the 20th day of the succeeding month and shall be remitted as designated by the Trustees of the Institute, or, for purposes of collection and transmittal electronically or through

.

(Name of local transmittal office)

The parties authorize the trustees of all National Funds (as defined below) to cooperatively establish uniform collection procedures to provide for efficient and effective operation of the various National Funds. The parties recognize that the National Funds can receive and process contribution reports and remittances electronically. The parties agree to encourage employers to utilize the electronic reporting and remittance system.

The parties agree to be bound by, and act in accordance with, the respective Plan Documents, Agreements and Declarations of Trusts and/or Trust Documents establishing or governing the International Training Institute for the Sheet Metal and Air Conditioning Industry, the National Energy Management Institute Committee, the Sheet Metal Occupational Health Institute Trust, and the Industry Fund of the United States, and to the extent that this Agreement requires contributions to the following funds, the Sheet Metal Workers' National Pension Fund, National Stabilization Agreement of the Sheet Metal Industry Trust Fund, Sheet Metal Workers' National Health Fund, Sheet Metal Workers' International Association Scholarship Fund, Sheet Metal Workers' National Supplemental Savings Plan (collectively, "National Funds"), as applicable and the separate agreements and declarations of trusts of all other local or national programs and benefit plans to which it has been agreed that contributions will be made. In addition, the parties agree to be bound by any amendments to said trust or plan documents as may be made from time to time and hereby designate as their representatives on the Board of Trustees such trustees as are named together with any successors who may be appointed pursuant to said documents.

SECTION 16. In the event that the Employer becomes delinquent in making contributions to any national or local Fund, the Union may withdraw all employees from the service of the Employer within days notice of such delinquency by the trustees. The withdrawal of such employees from the service of the Employer shall not constitute a violation of any provision of this Agreement.

SECTION 17(a). The Employer shall comply with any bonding provisions governing local Funds that may be negotiated by the local parties and set forth as a written Addendum to this Agreement. The Employer shall likewise comply with bonding requirements established by the Trustees of the National Funds.

(b). When an Employer is performing any work specified in Article I of this Agreement outside of the area covered by this Agreement, and within the area

covered by another Agreement with a local union affiliated with the Sheet Metal Workers' International Association, the Employer shall comply with uniformly applied bonding requirements of that local area that are reasonable and necessary to ensure the timely payment of any contribution that may be required to local and national Funds, but in no event shall such bonds be in excess of three (3) months estimated contributions to local and national Funds.

(c). An Employer that has been delinquent in making contributions to any national or local fund shall, upon written notification of the trustees or local union, make the specified payment to such fund at weekly intervals. Such obligation shall continue until the Employer has not been delinquent in making contributions for a period of ____ consecutive

Commentary

This section is intended to make clear the obligation to contribute to the national funds. It sets forth all of the contributions to jointly trusteed funds which are provided for in the SFUA. They are the National Training Fund, the National Energy Management Institute, and the Sheet Metal Occupational Health Institute Trust. In 2011, the contribution language for ITI, NEMI and SMOHIT was amended to provide that the hourly contribution amount would be that set forth by the respective trustees.

Additionally, this section was amended to incorporate by reference the trust documents of national funds, and encourage employers to use electronic reporting and remittance system established by those funds.

ARTICLE VIII (continued)

SECTION 18. The Employer and the Union understand that, the Sheet Metal Workers' National Pension Fund ("NPF" or "Fund") has issued a Rehabilitation Plan under the Pension Protection Act of 2006 and may in the future issue a Funding Improvement Plan under the Act. In addition, the NPF's Rehabilitation Plan or Funding Improvement Plan may provide for schedules which must be adopted by new or existing parties to this Agreement.

The parties agree that any schedule described above will be deemed to be adopted automatically if, in accordance with this Agreement, the Union allocates

or reallocates a portion of the wage and fringe-benefit package, or where the agreement provides for an automatic allocation or reallocation of the wage and fringe-benefit package, that is sufficient to cover fully any increases in contribution rates to the pension fund that has issued that schedule.

It is undesirable to pay a surcharge upon pension contributions, or face other undesirable consequences for failure to adopt a schedule. Accordingly, in the absence of a reallocation as provided above, at such time as the pension fund(s) furnishes the Employer and the Union with schedules as provided above, either party may re-open this Agreement upon thirty days written notice to the other, for the purpose of reaching agreement upon the adoption of one of those schedules. During the negotiations, the parties shall give due recognition to the desirability of maintaining pension benefits in light of economic conditions in the local area.

The parties agree further that the schedule described above will become part of this agreement, and will be incorporated by reference herein, on the date the schedule is adopted or is deemed to have been adopted automatically in accordance with the terms above. The parties will not take any action or actions inconsistent with the NPF's Rehabilitation Plan or Funding Improvement Plan of which the schedules are a part, as modified or amended from time-to-time.

Commentary

This section was originally added in 2008 in anticipation of the NPF adopting a rehabilitation play in accordance with the Pension Protection Act and local parties needing to adopt a schedule under the rehabilitation plan. The language was later updated in 2011 to reflect that the NPF has issued a Rehabilitation Plan under the PPA and would issue a Funding Improvement Plan, as the financial condition of the NPF improves.

ARTICLE IX

SECTION 1. Journeymen, apprentice, preapprentice and classified sheet metal workers covered by this Agreement shall provide for themselves all necessary hand tools. The Union and the Employer shall establish a standardized tool list, which shall be set forth as a written addendum attached hereto.

SECTION 2. Journeymen, apprentice, preapprentice and classified sheet metal workers covered by this Agreement shall not be permitted or required as a condition of employment to furnish the use of automobile or other conveyance to transport men, tools, equipment or materials from shop to job, from job to job, or from job to shop; facilities for such transportation to be provided by the Employer. This provision shall not restrict the use of an automobile or other conveyance to transport its owner and personal tools from home to shop or job at starting time or from shop or job to home at quitting time.

Commentary

The language of this article is self-explanatory. It requires the employees to provide their own hand tools. In addition, it states a journeyman, apprentice or preapprentice cannot be required, as a condition of employment, to furnish the use of an automobile or other conveyance to transport men, tools, equipment or materials from shop to job, from job to job, or from job to shop.

ARTICLE X

The Union and the Employer, whether party to this Agreement independently or as a member of a multi-employer bargaining unit, agree to utilize and be bound by this Article.

SECTION 1. Grievances of the Employer or the Union, arising out of interpretation or enforcement of this Agreement, shall be settled between the Employer directly involved and the duly authorized representative of the Union, if possible. Both parties may participate in conferences through representatives of their choice. The local Employers' Association or the Local Union, on its own initiative, may submit grievances for determination by the Board as provided in this Section. The grievance procedure set forth in this Article applies only to labor-management disputes.

To be valid, grievances must be raised within thirty (30) calendar days following the occurrence giving rise to the grievance, or, if the occurrence was not ascertainable, within thirty (30) calendar days of the first knowledge of the facts giving rise to the grievance.

SECTION 2. Grievances not settled as provided in Section 1 of this Article may be appealed by either party to the Local Joint Adjustment Board where the work was performed or in the jurisdiction of the Employer's home local and such Board shall meet promptly on a date mutually agreeable to the members of the Board, but in no case more than fourteen (14) calendar days following the request for its services, unless the time is extended by mutual agreement of the parties or Local Joint Adjustment Board. The Board shall consist of representatives of the Union and of the local Employers' Association and both sides shall cast an equal number of votes at each meeting. Except in the case of a deadlock, a decision of a Local Joint Adjustment Board shall be final and binding.

Notice of appeal to the Local Joint Adjustment Board shall be given within thirty (30) days after termination of the procedures prescribed in Section 1 of this Article, unless the time is extended by a mutual agreement of the parties.

SECTION 3. Grievances not disposed of under the procedure prescribed in Section 2 of this Article, because of a deadlock or failure of such Board to act, may be appealed jointly or by either party to a Panel, consisting of one (1) representative appointed by the Labor Co Chairman of the National Joint Adjustment Board and one (1) representative appointed by the Management Co Chairman of the National Joint Adjustment Board. Appeals shall be mailed to the National Joint Adjustment Board.* Notice of appeal to the Panel shall be given within thirty (30) days after termination of the procedures prescribed in Section 2 of this Article. Such Panel shall meet promptly but in no event more than fourteen (14) calendar days following receipt of such appeal, unless such time is extended by mutual agreement of the Panel members. Except in case of deadlock, the decision of the Panel shall be final and binding.

In establishing the grievance procedure of the Standard Form of Union Agreement, it was the intent of Sheet Metal Workers' International Association and the Sheet Metal and Air Conditioning Contractors' National Association, Inc. to establish a method for resolving grievances permitting appeals for out-of-area Employers from the grievance arbitration procedures established for the territory in which work is performed. An Employer who was not a party to the Labor Agreement of the area in which the work in dispute is performed may appeal the decision of the Local Joint Adjustment Board from that area, including a unanimous decision, as well as a decision of any alternative arbitration tribunal established for that area, and request a Panel hearing as set forth in Section 3 of this Article, providing such appeal is approved by the Co Chairmen of the National Joint Adjustment Board. Such a right of appeal shall exist despite any contrary provision in the agreement covering the area in which the work is performed.

For the purposes of this Section, an Employer who is party to the Labor Agreement of the area in which the work in dispute is performed, but has no permanent shop within the area served by the Local Joint Adjustment Board that rendered the unanimous decision, may also be entitled to appeal a deadlocked or unanimous Local Joint Adjustment Board decision, and request a Panel hearing.

SECTION 4. Grievances not settled as provided in Section 3 of this Article may be appealed jointly or by either party to the National Joint Adjustment Board. Submissions shall be made and decisions rendered under such procedures as may be prescribed by such Board. Appeals to the National Joint Adjustment Board shall be submitted within thirty (30) days after termination of the procedures described in Section 3 of this Article. The Procedural Rules of the National Joint Adjustment Board are incorporated in this Agreement as though set out in their entirety. (Copies of the procedures may be obtained from the National Joint Adjustment Board.*)

SECTION 5. A Local Joint Adjustment Board, Panel and the National Joint Adjustment Board are empowered to render such decisions and grant such relief

to either party as they deem necessary and proper, including awards of damages or other compensation.

SECTION 6. In the event of non compliance within thirty (30) calendar days following the mailing of a decision of a Local Joint Adjustment Board, Panel or the National Joint Adjustment Board, a local party may enforce the award by any means including proceedings in a court of competent jurisdiction in accord with applicable state and federal law. If the party seeking to enforce the award prevails in litigation, such party shall be entitled to its costs and attorney's fees in addition to such other relief as is directed by the courts. Any party that unsuccessfully challenges the validity of an award in a legal proceeding shall also be liable for the costs and attorneys' fees of the opposing parties in the legal proceedings.

*All correspondence to the National Joint Adjustment Board shall be sent to the following address:
National Joint Adjustment Board, P.O. Box 220956, Chantilly, VA 20153 0956
or 4201 Lafayette Center Drive, Chantilly, VA 20151 1219.

SECTION 7. Failure to exercise the right of appeal at any step thereof within the time limit provided therefore shall void any right of appeal applicable to the facts and remedies of the grievances involved. There shall be no cessation of work by strike or lockout during the pendency of the procedures provided for in this Article. Except in case of deadlock, the decision of the National Joint Adjustment Board shall be final and binding.

SECTION 8. In addition to the settlement of grievances arising out of interpretation or enforcement of this Agreement as set forth in the preceding sections of this Article, any controversy or dispute arising out of the failure of the parties to negotiate a renewal of this Agreement shall be settled as hereinafter provided:

(a). Should the negotiations for a renewal of this Agreement or negotiations regarding a wage/fringe reopener become deadlocked in the opinion of the Union representative(s) or of the Employer('s) representative(s), or both, notice to that effect shall be given to the National Joint Adjustment Board.

If the Co Chairmen of the National Joint Adjustment Board believe the dispute might be adjusted without going to final hearing before the National Joint Adjustment Board, each will then designate a Panel representative who shall proceed to the locale where the dispute exists as soon as convenient, attempt to conciliate the differences between the parties and bring about a mutually acceptable agreement. If such Panel representatives or either of them conclude that they cannot resolve the dispute, the parties thereto and the Co Chairmen of the National Joint Adjustment Board shall be promptly so notified without recommendation from the Panel representatives. Should the Co Chairmen of the National Joint Adjustment Board fail or decline to appoint a Panel member or should notice of failure of the Panel representatives to resolve the dispute be given,

the parties shall promptly be notified so that either party may submit the dispute to the National Joint Adjustment Board.

In addition to the mediation procedure set forth above or as an alternate thereto, the Co Chairmen of the National Joint Adjustment Board may each designate a member to serve as a Subcommittee and hear the dispute in the local area. Such Subcommittees shall function as arbitrators and are authorized to resolve all or part of the issues. They are not, however, authorized to deadlock and the matter shall be heard by the National Joint Adjustment Board in the event a Subcommittee is unable to direct an entire resolution of the dispute.

The dispute shall be submitted to the National Joint Adjustment Board pursuant to the rules as established and modified from time to time by the National Joint Adjustment Board. The unanimous decision of said Board shall be final and binding upon the parties, reduced to writing, signed and mailed to the parties as soon as possible after the decision has been reached. There shall be no cessation of work by strike or lockout unless and until said Board fails to reach a unanimous decision and the parties have received written notification of its failure.

(b). Any application to the National Joint Adjustment Board shall be upon forms prepared for that purpose subject to any changes which may be decided by the Board from time to time. The representatives of the parties who appear at the hearing will be given the opportunity to present oral argument and to answer any questions raised by members of the Board. Any briefs filed by either party including copies of pertinent exhibits shall also be exchanged between the parties and filed with the National Joint Adjustment Board at least twenty four (24) hours in advance of the hearing.

(c). The National Joint Adjustment Board shall have the right to establish time limits which must be met with respect to each and every step or procedure contained in this Section. In addition, the Co Chairmen of the National Joint Adjustment Board shall have the right to designate time limits which will be applicable to any particular case and any step therein which may be communicated to the parties by mail, facsimile or telephone notification.

(d). Unless a different date is agreed upon mutually between the parties or is directed by the unanimous decision of the National Joint Adjustment Board, all effective dates in the new agreement shall be retroactive to the date immediately following the expiration date of the expiring agreement.

SECTION 9. Employers not contributing to the Industry Fund of the United States (IFUS) will be assessed a fee to be determined periodically by the Administrator of the National Joint Adjustment Board. Proceeds will be used to reimburse IFUS for costs of arbitration under the provisions of Article X.

SECTION 10. 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.

SECTION 11. In administering and conducting dispute resolution activities under the arbitration procedures of the Standard Form of Union Agreement, the National Joint Adjustment Board, the Sheet Metal Workers' International Association, the Sheet Metal and Air Conditioning Contractors' National Association, Inc., and their representatives, are functioning as arbitrators and not as the representative of any entity that is party to such dispute. Therefore, they shall enjoy all of the rights, privileges, and immunities afforded to arbitrators under applicable law.

Commentary

Article X is the grievance and arbitration procedure established between the national parties. It provides in Sections 1 through 7 for a four-level grievance procedure to resolve issues concerning the interpretation or enforcement of the agreement. Unlike Article X, Section 8, the grievance and arbitration procedures contained in Sections 1 through 7 are a mandatory subject of bargaining.

Decisions of the NJAB, a panel, or a LJAB concerning the enforcement or the meaning of a provision of the agreement are binding and enforceable in a court of law. The law provides for very limited review of arbitration awards. In general, these awards will be upheld unless it can be shown that:

1. the award was procured by corruption, fraud, or undue means;

2. there was evident partiality or corruption in the arbitrators;

3. the arbitrators are guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy or of any other misbehavior by which the rights of any party have been prejudiced;

4. the arbitrators exceeded their powers or so imperfectly executed them such that a final and definite award upon the subject matter submitted was not made.

Because it is important to have consistency regarding the interpretation of a labor agreement, decisions of the NJAB concerning the interpretations of the SFUA should be given deference in future disputes. It is clear that arbitration awards are not as precedent setting as judicial awards. It is still important, however, that previous awards concerning the same language should be given great weight. This is particularly true when it is shown that the parties have had the opportunity to change the agreements through negotiations following the award and the language has remained unchanged.

Section 3 sets forth an exception for traveling contractors. If they are the recipient of an adverse decision from a Local Joint Adjustment Board outside of the employer's home area, the contractor may appeal and request a panel hearing with the approval of the Co-Chairmen of the NJAB. The purpose of that exception is to assure that out-of-area contractors receive fair treatment when performing work out of their home area. Such requests have generally been approved by the Co-Chairmen.

From time to time there have been questions raised about who an out-of-area contractor is. If an employer has more than one established place of business in which it has a permanent shop and it signs the local agreement, that contractor

would not be considered an out-of-area contractor even though the home office of the enterprise might be in another geographic area.

From time to time it has been argued that anybody who signs a local contract is no longer an out-of-area contractor. This has led some local unions to insist that a local contract be signed before it will furnish manpower. If the purpose in doing so is to limit appeal rights under Article X that probably will not be accepted by the NJAB as a change of status to a local signatory contractor. Our advice has been to avoid signing local agreements to be certain that your appeal rights as an out of area contractor are preserved.

Procedural rules have been established and modified from time to time. All Chapters and contractors should be certain to have copies of those procedures and to study them prior to any appearance concerning a case under Article X.

To discourage frivolous lawsuits challenging the validity of awards under the grievance process, a provision was added to the Standard Form making the unsuccessful challenger liable for the other parties' attorneys' fees and costs.

Section 7 commits the party to refrain from striking or locking out during the pendency of procedures under Article X. This means that the parties are assured of continuity of work while grievances are processed with the exception that a strike or lockout over a grievance could occur if the NJAB deadlocks. If there is a deadlock, it is possible that either party could bring a court action in an attempt to resolve the underlying grievance.

Section 8 is the interest arbitration provision which provides that the NJAB has jurisdiction to resolve unresolved contractual terms at the expiration of the agreement.

Section 9 provides for fees to be assessed for non-IFUS employer users of the arbitration system to reimburse IFUS for costs of arbitration.

Section 10 permits parties to bring before the NJAB disputes over the establishment, and as of 2010, the amendment of specialty addendums at contract renewal or midterm.

Section 11 confirms that SMACNA and SMART's representatives conducting the grievance and contract renewal hearings are acting as arbitrators. As arbitrators, they have certain immunity from liability as well as other rights and protections under the law. It is important the arbitrators conduct hearings in an impartial and fair manner consistent with their role so as to safe-guard their protections.

Legal Developments

1. It is well established that interest arbitration is a nonmandatory subject of bargaining. Article X, Section 8, of the Standard Form is interest arbitration. Therefore, in a Section 9 bargaining relationship, it is an unfair labor practice to bargain to an impasse over that issue.

2. It is solidly established that the interest arbitration requirements of Article X, Section 8, are enforceable at the expiration date of an agreement even if the employer has attempted to terminate a Section 8(f) relationship. See Local 20 v. Baylor Heating, 877 F.2d 547, 131 LRRM 2838 (7th Cir. 1989).

Therefore, while Article X, Section 8, cannot be reimposed by the NJAB over the objection of either party, the Board may issue an order under Article X, Section 8, at expiration imposing contract conditions on mandatory subjects of bargaining. See, also, Local 206 v. R. K. Burner Sheet Metal, 859 F.2d 758, 129 LRRM 2866 (9th Cir. 1988) and Sheet Metal Workers Local 57 Welfare Fund v. Tampa Sheet Metal, 786 F.2d 1459, 122 LRRM 2161 (11th Cir. 1986) and, 122 LRRM 3382 (MD Florida 1986).

ARTICLE XI

ARTICLE XI

SECTION 1. All duly qualified apprentices shall be under the supervision and control of a Joint Apprenticeship and Training Committee composed of an equal number of trustees, half of whom shall be selected by the Employer, and half by the Union. There shall be a minimum of 4 trustees. Said Joint Apprenticeship and Training Committee shall formulate and make operative such rules and regulations as they may deem necessary and which do not conflict with the specific terms of this Agreement, to govern eligibility, registration, education, transfer, wages, hours, working conditions of duly qualified apprentices and the operation of an adequate apprentice system to meet the needs and requirements of the trade. Said rules and regulations when formulated and adopted by the parties hereto shall be recognized as part of this Agreement.

SECTION 2. The Joint Apprenticeship and Training Committee designated herein shall serve for the life of this Agreement, except that vacancies in said Joint Apprenticeship and Training Committee caused by resignation or otherwise, may be filled by either party hereto, and it is hereby mutually agreed by both parties hereto, that they will individually and collectively cooperate to the extent that duly qualified apprentices be given every opportunity to secure proper technical and practical education experience in the trade, under the supervision of the Joint Apprenticeship and Training Committee.

(a). The parties will review the needs for specialized and skill-upgrade training and cooperate to establish necessary programs which will then be supervised by the Joint Apprenticeship Training Committee.

SECTION 3. It is the understanding of the parties to this Agreement that the funds contributed by signatory Employers to the International Training Institute and any Local Joint Apprenticeship and Training Fund (Local JATC) will not be used to train

apprentices or journeymen who will be employed by employers in the Sheet Metal Industry not signatory to a collective bargaining agreement providing for contributions to the International Training Institute and a Local JATC. Therefore, the trustees of the International Training Institute and Local JATC shall adopt and implement a Scholarship Loan Agreement Program which will require apprentices and journeymen employed by signatory Employers to repay the cost of training either by service following training within the union sector of the industry or by actual repayment of the cost of training if the individual goes to work for a non signatory Employer in the Sheet Metal Industry. The cost of training shall include the reasonable value of all International Training Institute and Local JATC materials, facilities and personnel utilized in training. If a Local JATC does not implement the Scholarship Loan Agreement Program, the Local JATC shall be prohibited from utilizing International Training Institute materials and programs.

SECTION 4. It is hereby agreed that the Employer shall apply to the Joint Apprenticeship and Training Committee and the Joint Apprenticeship and Training Committee shall grant apprentices on the basis of one (1) apprentice for each three (3) journeymen regularly employed throughout the year. Provided, however, an Employer will not be entitled to a new apprentice if the Employer has an apprentice on layoff for lack of work.

SECTION 5. Each apprentice shall serve an apprenticeship of up to five (5) years and such apprentices shall not be in charge of work on any job and shall work under the supervision of a journeyman until apprenticeship terms have been completed and they have qualified as journeymen.

SECTION 6. A graduated wage scale similar to that shown below, based on the journeyman wage rate, shall be established for apprentices. The scale may vary based on local market conditions and recruiting requirements.

First year —First half 40% Second half 45% Third year —First half 60% Second half 65%
Second year—First half 50% Second half 55% Fourth year —First half 70% Second half 75%
Fifth year (where applicable)– First half 80% - Second half 85%

This Section shall not have the effect of reducing the wage progression schedule of any apprentice who was indentured prior to the effective date of this Agreement.

SECTION 7. The parties will establish on a local basis the SMART Youth to Youth program (the program) and the procedures to enable all apprentices to participate in the program. The activities of the program that deal with organizing and other traditional union activities shall be funded by the Local Union through a checkoff in compliance with the provisions of Section 302(c) of the Labor Management Relations Act of 1947. Activities that may be funded by Employer contributions

shall be so funded if, and to the extent, the parties shall agree locally to sponsor and implement the same.

SECTION 8. The parties agree that concentrated apprenticeship training is preferable to night schooling and urge the Joint Apprenticeship and Training Committee to implement concentrated training during the term of this Agreement.

The parties recognize that previous experience in the industry can be considered when evaluating and placing sheet metal workers into the apprenticeship program and the JATC shall work cooperatively with the parties in establishing standards for placing employees into the program. The parties shall also address the need to provide continuity in health care for those workers entering the program with prior experience in the industry.

SECTION 9. The parties agree that career-long skill upgrade training is necessary for an effective workforce and agree to undertake those measures available to them to encourage continuing training for sheet metal journeymen.

Commentary

This article provides for apprenticeship programs.

In Section 1, the Joint Apprenticeship and Training Committee is established with equal numbers of trustees divided between employer and union representatives. The minimum number permitted is four trustees in total. This gave local areas more latitude to put together a training committee. Prior to 2005, the Standard Form dictated a six-member committee. It authorizes that committee to formulate rules and regulations governing all aspects of apprenticeship training.

Section 2 further provides for continuity of the Committee and establishes their responsibility to provide a program of proper technical education for apprentices.

Section 3 requires the trustees of the Local Joint Apprenticeship and Training Fund to adopt a “Scholarship Loan Agreement Program,” concerning training provided to employees in the sheet metal industry. The Scholarship Loan

Agreement requires employees to reimburse the funds for the costs of training, in the event that the employee works for a nonsignatory contractor. An employee's obligations under the Scholarship Loan Agreement have been the subject of enforcement actions in a number of courts, with those obligations being upheld.

Section 4 establishes the national apprenticeship ratio.

Section 5 establishes the age limitations and term of apprenticeship. Please note that the age limitations, however, must be removed in local negotiations since they are no longer legally permitted to restrict entry into apprenticeship.

Section 6 establishes the appropriate wage scale in terms of percentage of the journey sheet metal workers' wage scale. In recognition that some areas believed a five-year apprenticeship was appropriate, a fifth year was added to the suggested schedule in 2005.

Effective July 1, 1995, percentage contributions to the National Pension Fund are permitted based upon the apprentice wage scale then in effect for each individual.

It should be noted in Section 7 that expenses of organizing and other traditional union activities are the responsibility of the local union under a Youth-to-Youth program. This limitation was included in the Standard Form to assure compliance with Section 302(c) of the LMRA.

Section 9 was added to the Standard Form in 2001 in order to promote journeyman level upgrade training. With the advancement of technology occurring rapidly, this type of training is of increased importance to the industry.

ARTICLE XII

SECTION 1. Sheet metal workers shall complete OSHA 10/OSHA 30 training, as well as any mandatory refresher course, as a condition of employment in the sheet metal industry. Such training shall be completed on the employee's time.

The parties to this Agreement shall take appropriate steps to provide that the cost of any materials used in such training, as well as the costs associated with providing instruction, shall be paid for by the Local Joint Apprenticeship and Training Fund.

SECTION 2. The parties are committed to maintaining a workplace that is safe, productive, and free of alcohol and illegal drugs. Therefore, they shall establish a substance abuse program which will include, as a minimum, the following components: owner mandated, reasonable suspicion, post accident, and random drug and alcohol testing. In the case of random testing, the procedures shall be established and administered in a manner so that such testing is conducted in a manner that is truly random. Any testing program shall be conducted on an industry wide basis, and in conformity with all applicable laws. The parties shall establish an appropriate means of funding such testing activities on an industry wide basis.

Commentary

This article was added to the SFUA in 2011. Section 1 requires SMART members to attend OSHA 10 and OSHA 30 Safety Training Classes, and any mandatory refresher courses, on their own time. The costs of materials and training to be provided by the local JATC.

Section 2 Add a SMACNA/SMART Drug and Alcohol Policy which provides for, at a minimum, owner mandated, reasonable suspicion, post-accident, and random drug and alcohol testing.

ARTICLE XIII

SECTION 1. It is hereby agreed that the Employer may apply to the Joint Apprenticeship and Training Committee and the Joint Apprenticeship and Training Committee shall grant preapprentices on the basis of one (1) preapprentice for each three (3) apprentices employed by the Employer. Provided, however, that an Employer who employs one (1) or more apprentices and at least three (3) sheet metal journeymen shall be entitled to at least one (1) preapprentice. Any apprentice of the Employer on layoff at the effective date of this Agreement must be rehired before said Employer is entitled to any preapprentice. Thereafter, the same conditions and ratios shall apply.

In the event the Employer is entitled to employ a preapprentice and the Union fails to comply with the Employer's written request to furnish a preapprentice within forty-eight (48) hours, the Employer may hire such employees and refer them to the Joint Apprenticeship and Training Committee for enrollment.

Preapprentices shall be enrolled as applicants for future openings in the apprenticeship program. The Joint Apprenticeship and Training Committee shall evaluate the qualifications of preapprentices for such openings during the first year of employment. No preapprentice shall be retained beyond one (1) year unless he has been found to be qualified as an applicant.

The wage scale for preapprentices shall be thirty percent (30%) of the wage rate of journeymen sheet metal workers. Health and welfare coverage shall be arranged on behalf of the preapprentices by the parties.

Pension contributions will be paid on all hours worked beginning with the first payroll period after 90 days in the amount of five percent (5%) of the journeyman pension fund contribution, to the next whole cent, or a minimum of twelve cents ($0.12) per hour, whichever is greater, for each hour worked on or

after the effective date of this agreement. The parties shall make all necessary arrangements so that any preapprentice being reclassified shall experience no break in benefits coverage.

Commentary

This article establishes a preapprentice ratio. This ratio has been substantially modified in many areas of the country where conditions dictate that more liberal preapprenticeship ratios are competitively necessary. It gives the employer the right to hire off the street if a request for a preapprentice is not filled within 48 hours.

The third paragraph requires that the qualification of preapprentices for future apprentice openings be determined in the first year. This does not mean that the preapprentice has to be placed in the apprenticeship program at the end of a year.

Preapprentices are not limited in what they can do so long as they work with a journeyman.

This article establishes a 30% wage rate for preapprentices. However, a review of local agreements shows this varies largely by area. Preapprentices are also entitled to pension coverage after 90 days and directs the local parties to arrange health benefits.

ARTICLE XIV

SECTION 1. Classified workers may be employed in the following ratio:

A. one (1) classified worker for any Employer who employs an apprentice;

B. two (2) classified workers for any Employer who employs at least three (3) apprentices;

C. thereafter, the ratio will be one (1) classified worker for each additional three (3) apprentices employed.

Classified workers may perform any work covered by Article I of which they are capable and will work under the general direction of a journeyman. The wage rate for classified workers will be not less than forty percent (40%) of the journeyman wage rate. They shall be covered by the local health and welfare plan. Pension contributions shall be the same percentage as their wage rate.

In the event the Employer is entitled to employ a classified worker and the Union fails to comply with the Employer's written request to furnish a classified worker within forty eight (48) hours, the Employer may directly hire such employees, and refer them to the Union.

Commentary

This Article establishes classified workers and the ratio in which they may be employed. It, also, establishes the minimum wage rate, pension and health and welfare contributions.

It is intended that classified workers would be a permanent classification and that they be permitted to perform any work covered by the contract which they are capable of performing so long as they work under the general direction of a journeyman.

ARTICLE XV

SECTION 1. SMACNA and the SMART are committed to promoting productive and cooperative labor-management relations. In furtherance of this goal, the local Employers' association and local Union agree to establish a labor-management committee which shall meet on a regular basis, but not less often than quarterly, to discuss industry issues of mutual concern. Such committees will strive to improve communications, understand and respond to industry direction and trends, and resolve common issues collaboratively.

Commentary

This Article was added to the Standard Form with the intent of promoting better communication and cooperation between the local labor and management parties.

ARTICLE XVI

SECTION 1. In applying the terms of this Agreement, and in fulfilling their obligations thereunder, neither the Employer nor the Union will discriminate in any manner prohibited by law.

Commentary

Added in 2001, this Article's intent is self-explanatory.

ARTICLE XVII

SECTION 1. This Agreement and Addenda Numbers through

attached hereto shall become effective on the day of

, (Month) (Year)

and remain in full force and effect until the day of

, (Month) (Year)

and shall continue in force from year to year thereafter unless written notice of reopening is given not less than ninety (90) days prior to the expiration date. In the event such notice of reopening is served, this Agreement shall continue in force and effect until conferences relating thereto have been terminated by either party by written notice, provided, however, that, if this Agreement contains Article X, Section 8, it shall continue in full force and effect until modified by order of the National Joint Adjustment Board or until the procedures under Article X, Section 8 have been otherwise completed.

SECTION 2. If, pursuant to federal or state law, any provision of this Agreement shall be found by a court of competent jurisdiction to be void or unenforceable, all of the other provisions of this Agreement shall remain in full force and effect. The parties agree to meet and negotiate a substitute provision. If negotiations are unsuccessful, the issue may be submitted for resolution by either party pursuant to Article X, Section 8 of this Agreement.

SECTION 3. 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.

SECTION 4. Each Employer hereby waives any right it may have to repudiate this Agreement during the term of this Agreement, or during the term of any extension, modification or amendment of this Agreement. This shall be effective during the entire term of any collective bargaining agreement that has been entered into under Section 8(f) of the National Labor Relations Act, and upon conversion of the bargaining relationship to one under Section 9(a) of the National Labor Relations Act, either by an election conducted by the National Labor Relations Board, or through the procedures set forth in this Agreement.

SECTION 5. By execution of this Agreement the Employer authorizes
(Name of Local Contractor Association)
to act as its collective bargaining representative for all matters relating to this Agreement. The parties agree that the Employer will hereafter be a member of the multi employer bargaining unit represented by said Association unless this authorization is withdrawn by written notice to the Association and the Union at least one hundred and fifty (150) days prior to the then current expiration date of this Agreement.

In witness whereof, the parties hereto affix their signatures and seal this
day of , , .
(Month) (Year)

THIS STANDARD FORM OF UNION AGREEMENT HAS PROVIDED FOR THE INCLUSION OF PREAPPRENTICES AND A REDUCTION OF THE WAGE SCHEDULE FOR NEW APPRENTICES. THE PURPOSE OF THIS IS TO MAKE CONTRACTORS MORE COMPETITIVE WITH NON-UNION COMPETITION. TO ACHIEVE THAT OBJECTIVE EMPLOYERS AGREE TO MINIMIZE MULTIPLE MARKUPS.

The Standard Form of Union Agreement is a recommended contract form that is revised from time to time by the Sheet Metal Workers' International Association and the Sheet Metal and Air Conditioning Contractors' National Association, Inc. In establishing such a recommended contract form, neither the Sheet Metal Workers' International Association, nor the Sheet Metal and Air Conditioning Contractors' National Association, Inc. has acted as the bargaining representative of any entity that may adopt all or part of the language of the Standard Form of Union Agreement. Furthermore, neither the Sheet Metal Workers' International Association nor the Sheet Metal and Air Conditioning Contractors' National Association, Inc., shall be deemed to be a party to any such collective bargaining agreement including such language.

Commentary

Section 1 establishes the term of contract and provides for automatic renewal unless the contract is reopened by written notice not less than 90 days prior to the expiration date. It also provides that the agreement will continue in effect until there is a deadlock between the parties in negotiation and that, if the agreement contains Article X, Section 8, the contract will continue in full force and effect until modified by order of the Board or until there is a deadlock under the procedures of Article X, Section 8.

Section 2 is a savings clause which provides that the contract will remain in full force and effect under circumstances where a court of law may find that a part of the agreement is void or unenforceable. It requires the parties to meet and negotiate a substitute provision and grants the NJAB the authority under Article X, Section 8, (if it is included in the agreement) to resolve the negotiations if the parties cannot agree to a substitute provision.

Section 3 requires the parties to bargain concerning any amendment to the SFUA adopted by the sponsoring national associations which is concluded during the term of the local agreement. It provides, however, that there will be no strike or lockout over the issue if the parties are unable to reach agreement.

Section 4 provides for an employer's waiver of any right to repudiate the agreement during the term of the contract. This provision has little meaning since the decision in John Deklewa and Sons which has established the principle that an 8(f) contract (a prehire agreement) cannot be repudiated during its term. The case also establishes the proposition that at expiration date either party can terminate an 8(f) agreement and there is no duty to bargain for an extension or

modification. It should be noted again, however, that if Article X, Section 8, is contained in the contract, the employer is contractually obligated to submit it to the jurisdiction of the NJAB under that Article and a contract may be reimposed on mandatory subjects of bargaining. This section was revised in 2011 to make clear that the waiver of repudiation rights applies whether the collective bargaining agreement is an 8(f) or a 9(a) agreement.

Section 5 requires the employer to authorize the local association to act as its collective bargaining representative for all matters relating to the agreement. If it is executed in the suggested form, it means that an independent who signs the contract would be represented by the Association for the term of the agreement. The section further provides that the employer becomes a member of the multi-employer bargaining unit and will remain a member of that bargaining unit unless the authorization is withdrawn by written notice to the Association and the Union at least 150 days prior to the expiration date of the agreement.

Section 5 was inserted for the purpose of attempting to stabilize multi-employer bargaining in the sheet metal industry.

The capitalized language following the “In witness” clause was intended to make it clear that the relief granted by way of preapprentices and the reduction of the wage schedule of new apprentices was agreed on to combat nonunion competition. It, also, encourages employers to attempt to bid directly to owners and awarding authority where possible in order to be assured that the lowest price for the work to be performed is provided in the face of that type of competition. There was and is no agreement to adopt a uniform bidding policy requiring direct

bidding of signatory contractors. The intent of the language is to encourage sheet metal contractors to be ready to pursue direct bidding where the sheet metal portion of a project is the largest part of the job and where there is little justification for a markup on that part of the job being paid to another contractor by reason of a subcontract. The belief is that under those circumstances the owner is better served by either granting the entire contract to the sheet metal contractor or separating the sheet metal portion and taking direct bids.

The language following that was added to clarify that this is a recommended document. In negotiation of the Standard Form, neither SMACNA nor SMART are acting as the bargaining representative of any local party. For a Standard Form provision to be effective, the local parties must bargain it into their local agreement.