

NMA Grievance Procedure for Offsite Fabrication

The International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) recently advised its local unions that off-site fabrication for National Maintenance Agreement (NMA) jobs is not subject to the NMA grievance procedures. SMACNA agrees with SMART's analysis of this issue.

As SMART noted, a contractor performing work on-site with an approved NMA Site Extension Request (SER) can be grieved by the craft who approved the SER. This contractor may or may not be signed to the SFUA but, by virtue of signing the NMA and having an approved SER, is subject to the NMA grievance procedure for work performed on-site. The NMA grievance procedure is the exclusive means of dispute resolution; therefore the SFUA Article X grievance procedure is not applicable for on-site disputes.

SMART recently asked the National Maintenance Agreement Policy Committee (NMAPC) whether the NMA grievance procedure is applicable to off-site fabrication performed by a contractor signed to both the SFUA and the NMA. By letter dated April 24, 2015, the NMAPC stated that the NMA is limited to work performed onsite and that work performed off-site, such as fabrication, which will be installed on the NMA jobsite, is not subject to the NMA grievance procedure.

Therefore, the contractor who is signatory to the SFUA and performing fabrication off-site for a NMA project is subject to the terms and conditions of the SFUA, including Article 2 (subcontracting fabrication), Article 8 (equalization to higher jobsite wage package) and Article 10 (grievance procedure). In other words, the NMA does not supersede contractual obligations with respect to work not covered by the NMA.

SMART's letter to its business managers and the NMAPC correspondence can be viewed below. For questions regarding applicability of SFUA grievance procedures, please contact SMACNA's Labor Relations staff.



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

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Charles F. Mulcahy
SMART Director of Craft Services

May 14, 2015

TO: SMART Building Trades Business Managers (U.S.)

RE: National Maintenance Agreement (NMA) Grievance Procedure and Offsite Fabrication

Brothers:

Please read and review the attached two documents; memorandum dated June 3, 1998 from Harry Bell, Bud Farally and Deborah Wyandt regarding NMA Grievances and second, a letter dated April 24, 2015 from Stephen Lindauer, for the National Maintenance Agreements Policy Committee (NMAPC), regarding off-site fabrication performed by SFUA signatories for jobsites covered by the NMA.

The June 3, 1998 Memorandum is self-explanatory. A contractor performing work on-site with an approved NMA Site Extension Request (SER) can be grieved by the craft who approved the SER. This contractor may or may not be signed to the SFUA but, by virtue of signing the NMA and having an approved SER, is subject to the NMA Grievance Procedure for work performed on-site. The NMA Grievance Procedure is the exclusive means of dispute resolution, therefore the SFUA Article X Grievance Procedure is not applicable for on-site disputes.

The second document, letter dated April 24, 2015 from Stephen Lindauer, answers a question brought by SMART as to the applicability of the SFUA in regard to off-site fabrication performed by a contractor signed to both the SFUA and the NMA. Article 27, Sub-paragraph (4) of the NMA states:

"This Agreement is a standalone agreement and none of the provisions in any local, regional, area or national collective bargaining agreement shall apply, unless specifically incorporated into this Agreement. Furthermore, this Agreement is the exclusive bargaining agreement for any work to which it is extended, and for such work it supersedes and overrides the terms and conditions of any and all other national, area or local collective bargaining agreements to which the parties hereto, or either of them may be signatory."

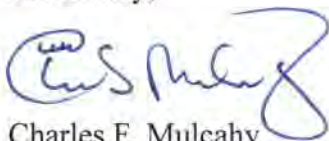
The question posed by SMART to the NMAPC is the applicability of SFUA Article 2, Section 2 and, Article 8, Section 2 when performing work on a NMA jobsite with an approved SER. Both of these SFUA Articles relate to offsite fabrication and specifically, the signatory contractor's obligation to demonstrate that when sub-contracting fabrication, the area standard wage (jobsite wage package) has been paid to the fabricators (Article 2, Section 2) and, when fabricating within their own shop, if the jobsite wage package is higher than the fabrication shop wage package, the shop fabricators receive the benefit of the higher wage package (Article 8, Section 2).

The question arose because an SFUA signatory contractor contended that SFUA Articles 2 and 8 are not applicable to contractors signed to the SFUA and performing work on a NMA jobsite, based upon the NMA (Article 27, Subparagraph 4 above). The contractor argued that when they sub-contracted fabrication they had no obligation to demonstrate the jobsite area standard wage package had been paid and if fabricating in their own shop, they had no obligation to equalize the wages of the shop fabricators to the higher jobsite wage package.

The April 24, 2015 letter from the NMAPC states that the NMA is limited to work performed on-site and that work performed off-site, such as fabrication, which will be installed on the NMA jobsite, is not subject to the NMA Grievance Procedure. Therefore, the contractor who is signatory to the SFUA and performing fabrication off-site for a NMA project is subject to the terms and conditions of the SFUA, including Article 2 (sub-contracting fabrication), Article 8 (equalization to higher jobsite wage package) and Article 10 (grievance procedure). In other words, the NMA does not supersede contractual obligations with respect to work not covered by the NMA.

It is the Constitutional obligation of every SMART Business Manager to enforce all SFUA Articles including Article 2 and Article 8 on all work including fabrication for projects covered by the NMA. If any questions related to this letter, please feel free to contact me at the General Office (202) 662-0825 or at cmulcahy@smart-union.org.

Fraternally,



Charles F. Mulcahy
SMART, Director of Craft Services

cc: Joseph Sellers
Rich McClees
Brad Plueger
IA Reps
Deborah Wyandt
Anthony Asher



Memorandum

Date: June 3, 1998

To: SMACNA Chapter Executives
SMWIA Business Managers
Local Joint Adjustment Board Management Chairpersons

From: Harry Bell, Assistant to the General President - SMWIA
William Farally, Chief International Representative - SMWIA
Deborah Wyandt, Director, Labor Relations - SMACNA

Subject: National Maintenance Agreement Grievances

SMACNA and the SMWIA have received a number of recent inquiries regarding the proper forum for processing grievances that arise on National Maintenance Agreement (NMA) projects.

Attached for your information is the **exclusive** grievance procedure for disputes that arise on NMA projects. A grievance form fact sheet that must be submitted to the NMA Policy Committee is also attached.

If a contractor is signatory to the National Maintenance Agreement and if the International Union has approved the project in question for coverage by the NMA, all disputes must be processed under the NMA grievance procedure. Please note that the time limits and steps in the NMA grievance procedure differ substantially from those set forth in Article X of the Standard Form of Union Agreement (SFUA). Disputes occurring on NMA projects will not be processed under the SFUA Article X grievance procedure.

Contractors, Local Union Business Managers and Representatives and Local Joint Adjustment Board Members who have questions regarding the proper forum for processing NMA grievances should contact Harry Bell (SMWIA) at (202) 783-5880, Deborah Wyandt (SMACNA) at (703) 802-2994 or Steve Lindauer (NMAPC) 703-524-3336.



NATIONAL MAINTENANCE AGREEMENTS POLICY COMMITTEE, INC.

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Stephen R. Lindauer
Impartial Secretary/CEO

April 24, 2015

Mr. Charles F. Mulcahy
Chief International Representative and Director of Jurisdiction
Sheet Metal Workers
SMART
1750 New York Avenue, N.W. 6th Floor
Washington, DC 20006

Dear Mr. Mulcahy:

This shall serve to acknowledge receipt of SMART letter of March 26, 2015 wherein you requested that the the National Maintenance Agreements Policy Committee (NMAPC) provide clarification as to the application of the National Maintenance Agreements (NMAs) at offsite fabrication facilities.

Please be advised that at its meeting of April 22, 2015 the NMAPC Labor-Management Committee adopted the recommendation of the Agreement Analysis Committee that the applicability of a National Maintenance Agreement is limited to work performed at the site to which the Agreement has been extended by mutual agreement of a signatory contractor and the International Union. It was further determined that interpretations or issues which may arise under other collective bargaining agreements for work not performed at an NMA site, such as offsite fabrication, are not subject to resolution under the grievance procedure provided for under the National Maintenance Agreement.

Please contact this office should you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Stephen R. Lindauer".

Stephen R. Lindauer
Impartial Secretary/CEO

SRL/dmh

cc: NMAPC Committee
(w/ attachments)