

# **Strategies for Regaining Local Market Share**

## **An MCAA White Paper**

### **July, 2008**

**Conclusion:** Adoption of a project deployment model to regain local market share by matching the competitive advantages of the non-union sector, without also impairing the institutional integrity of local unions, can only be achieved by creative local labor/management relations that fully exploit the productivity advantages of the union-sector workforce. Doing so is the key to organizing more members and employers into the bargaining unit, thereby strengthening the whole.

**Key Strategies:** The potential for success in a local market recovery effort is often enhanced when these key strategies are considered for adoption, where feasible, in the local collective bargaining agreement:

- improving individual worker productivity and reducing crew costs with differential wage rates and sub-journeyworker classifications;
- allowing portability of union member manpower across local union jurisdictional boundaries without restriction or prior approval; and
- allowing unrestricted importation of union-fabricated piping assemblies of all types across local union jurisdictional boundaries without restriction or prior approval.

**Background:** In July 2005 at an MCAA Board of Directors meeting Richard Barnes, former Director of the Federal Mediation and Conciliation Service, facilitated a discussion of the decline in market share in the union-sector of the mechanical construction industry and strategies for regaining lost market share.

A Market Recovery Task Force was subsequently appointed and a survey was distributed to Board members and local affiliate executives. Responses to that survey were incorporated into the Task Force deliberations in June 2006, chaired by MCAA President Mike Cullinane. The strategies recognized by the Task Force have been discussed with the UA leadership in various meetings in 2007 and continuing into 2008.

**Significant progress has been made.** -- A number of strategies recommended by the MCAA Task Force have been undertaken by the UA under the bold leadership of General President Bill Hite since then. Many of those beneficial changes have been highlighted in various MCAA publications. Indeed, the list is extensive and impressive for such a relatively short period of time. For example:

- The adoption and widespread implementation of the landmark Standard for Excellence;
- The development of the UA/MCAA Foreman Training and Certification Program;
- Widespread adoption of accelerated training and direct entry of pipe trades workers;

- A revised UA/MCAA Substance Abuse and Testing Policy in line with the CURT/BCTD work product; and
- Ongoing UA workforce demographic analyses and performance metrics for local UA administration.

Moreover, all these innovative developments have been developed while the United Association has been implementing significant internal reform and operational improvements enacted at its 2006 Convention.

***MCAA believes fundamental competitive improvements are imperative.*** -- MCAA believes the pace of the change and challenges facing the union mechanical contracting industry, even with the anticipated strong long-term demand in the heavy-industrial sector, require more fundamental changes in local labor/management collective bargaining relations.

The status quo in the organized sector of the mechanical industry for too long has accepted an across-the-board and sustained loss of market share – an increasingly untenable position for the industry. The pace of challenges confronting local collective bargaining groups is quickening, with adverse workforce demographics, technological advances promoting pre-fabrication and off-site modular construction and prefabrication, and stricter regulatory proscriptions on high pension and health and welfare legacy costs, all demanding paradigm shifts in local bargaining agreements which, so far, are not developing fast enough.

The overall strength of the union-sector in the mechanical construction industry depends on the strength of local bargaining to build the skilled workforce and perform the work in a local area in the most competitive way. Market share is built with top-flight competitive local agreements and project performance, both of which trump top-down organizing every time. In virtually all cases, bargaining is in the control of the local unions and local multiemployer associations, and dictates from national labor or management groups are of limited consequence and influence. Market strength and market share are built and maintained, or lost, in local bargaining. Yet still nationally, we are only as strong as the sum of our parts.

Open-shop competition has been building, has prospered, and proliferates without geographic boundary, trade jurisdictional lines, or geographic limitations on workforce portability. Crew costs advantages are structured with differentiated wage and skill rates that respond to workforce supply and demand, and work is won with unfettered adaptation to technological innovations. Open-shop firms can follow their customers and build their projects without trade jurisdiction or geographic limitations on effective workforce deployment.

In the union sector, too often in too many places, insularity and geographic protectionism among local labor/management bargaining groups lead to diminishing market share. For example, while strict barriers on manpower or fabrication portability may appear to serve the short-term best interest of the group defending an ever-shrinking share of the market,

most often the economics of the marketplace eventually prevails and work is awarded increasingly to more adaptable open-shop competitors.

***Failing to recapture an ever greater share of expanding markets is perilous.*** -- One of the primary conclusions of MCAA's Task Force is that, over the long-term, periods of market expansion present the most peril for local bargaining groups to incur decline and attrition of market share. The combination of full and expanding employment presents an insurmountable obstacle to market competitiveness improvements time and again in the in local bargaining agreements. It is that full employment complacency that cedes an ever-increasing share of the market to the open shop during the upturn and leaves the non-union sector as a stronger competitor when the market demand eventually slackens. The political dynamics of local union leadership and the complacency and relative weak position of local employer groups join in league to help avoid the reality of a declining and untenable market position over the long term.

***Avoiding a tipping point in low union-sector market density is crucial.*** -- MCAA believes that any repeat of that complacency in local bargaining during this market expansion, combined with the overall workforce deficit and an adverse demographic in the UA workforce, could mark a tipping point in the union sector of the mechanical industry that would leave the open shop even stronger in many areas and consequently nationally. If full employment and steady business inventories lull local unions and multiemployer groups into the false comfort zone of status-quo bargaining relations yet again in this market expansion, then few will be surprised if the low tipping point in union-sector market density is reached at the next turn of the market cycle, finally ceding the market to the open shop irreversibly for the long term.

***Joint labor/management recognition of the urgent need for improvements is of paramount importance.*** -- MCAA firmly believes that the leadership of the United Association and the Building and Construction Trades Department genuinely recognize this present moment of both combined great *peril* and great *opportunity*. It is the intention of the MCAA to be an honest and constructive partner with the United Association in sharing leadership and responsibility for making sure it is the *opportunity* in this market cycle that is seized as creatively and rapidly as possible to make sure the rebound is strong and sustained.

In publishing this white paper, MCAA is offering its support and extending its resources to local collective bargaining efforts to take whatever bold steps they choose to finally step up to the challenge of rebuilding and expanding market share. Of course, MCAA's interest in a strong and resurgent union sector is co-extensive with the UA's identical interest. In the construction industry in 2008 and for the foreseeable future, national and local labor/management interests are the same – adversary relations got us where we are, and won't recapture the market. While adversary labor/management relations may have been the norm in this or other industries in decades long since past, now international, domestic and local economic and workforce trends are fundamentally different, and demand that prudent stewards of local collective bargaining groups very quickly recognize the changed conditions of 2008 and the coming years.

***Labor/management leadership in co-determination is essential in rebuilding market share.*** -- MCAA strongly asserts its co-equal role in this crucial effort as the national representative of good faith bargaining partners in local associations of union employers with the UA over the long term. Signatory contractors are part of the essential solution for the union sector and not any part of any union's problem. MCAA employers and their associations are fully co-equal in responsibility and interest with union members and their local and international union in co-determining the future of the union sector of the mechanical construction industry -- just as it has been union-signatory contractors that jointly with their local unions have built the underlying workforce development infrastructure in the industry that can be harnessed now to reassert the primacy of the union sector over the long term.

### ***Discussion Points***

#### ***1. Labor and management local and national leadership share responsibility for market decline.***

**1.1.** Local management multiemployer bargaining groups in the past have often been weak and compliant bargaining partners, too prone to convenient bargaining concessions, susceptible to whipsaw bargaining tactics, and open to breaking ranks and signing interim agreements owing to competitive business pressures both within and outside the multiemployer bargaining unit.

**1.2.** Local labor groups have in the past often exploited bargaining advantages with owners and other bargaining groups, and under project and national agreements, to whipsaw local multiemployer groups, only to serve the local union's political/institutional short-term benefit to the detriment of the long-term competitive position of the local bargaining groups.

#### ***2. Local union and management interests are co-equal and co-extensive.***

**2.1.** Local and national union jurisdictional claims are broad, legitimate and not mutually exclusive of co-equal claims of mutual co-interest with signatory contractors. With union density in the construction industry overall at around 13% in 2007, and approximately 30% of all occupational employment in the pipe trades in 2006 (approximately 17% among all hvacr technicians in 2006), both parties' duty of fair representation demands urgent recognition of mutual interest, not continuing adversary relations and anti-competitive agreements.

**2.2.** Joint local labor/management training, benefit funds and bargaining unit relations are primary elements of co-equal mutual interest. Labor and management have an equal and mutual proprietary interest in the collective bargaining unit's long-term success and share ultimate proprietary liability for any eventual failure. For example, a pension fund that falls into tightly regulated, under-funded status under the new pension laws because of adverse workforce demographics or stock market volatility directly

imperils the workers' retirement security, *and just as directly* threatens the financial viability of the contributing employers and ultimately the personal responsibility of the principals of those union-signatory companies. Parallel examples apply with respect to jobsite performance, bonding requirements, contract compliance, employment administration, safety responsibility and other joint trust and training fund responsibilities.

### ***3. Construction industry bargaining and union administration are materially different from the industrial/service sector bargaining.***

**3.1.** In addressing construction industry market competitiveness, parallels with management approaches in other industries are not always applicable, as multiemployer bargaining units in construction are comprised of business competitors operating in one area, most often signing voluntary pre-hire collective agreements, and operating with both union and non-union competition from both inside and outside the area, with a range of cross-cutting pressures on local bargaining outcomes.

**3.2.** Similarly, construction trades local labor unions operate under a broad range or complexity, including those same voluntary prehire agreements, with inter-trade institutional and jurisdictional competition with other trades and employers in any particular area, and with union administration rules (including hiring halls, traveling members and contractors, and retiree voting on bargaining issues and benefit funds coverage and subsidies) that are not comparable in many ways with industrial or service industry union bargaining.

**3.3.** The multiemployer joint labor/management workforce development infrastructure -- including a vast network of sophisticated apprenticeship and journeyworker upgrade programs, nationwide portable workforce health and welfare and pension benefits systems, and nationwide job transferability -- remains a workforce competitiveness system of potentially tremendous competitive advantage for small and medium-sized multiemployer bargaining unit companies over the non-union sector of the industry.

### ***4. Union-sector market recovery depends on improving project cost competitiveness.***

The MCAA Market Recovery Task Force identified a broad scope market improvement measures that they recommend highly to local labor/management bargaining groups to consider in joint interest-based bargaining approaches to building market share. The points are group into four main topics: 1) pay and benefits improvement and flexibility; 2) workforce deployment and credentialing; 3) supervisory/productivity improvements; and 4) updated bargaining relations.

**4.1 *Tiered wage rates*** -- Adoption of the merit-shop project deployment model to match competitive advantages of the non-union sector, without also at the same time impairing the institutional integrity of local unions and multiemployer bargaining groups, can only be achieved by creative local labor/management relations that fully

exploit the productivity potential of the union sector workforce development system. Hourly wage rates for fully productive journey workers are not the primary competitive impairment for MCAA member firms. The lack of differentiated wage rates and sub-journeyworker classifications, and the heavy burden of high benefits legacy costs are more direct impediments. Tiered wage systems have been adopted across a broad range of industries, occupations, and professions throughout the American economy and are long overdue in the mechanical construction industry.

Too often, sub-journeyworker classifications are adopted in areas where substantial market share is *already* lost. MCAA's Task Force also discussed the changes in workforce demographics that are making classification flexibility even more imperative. Chief among them is the adverse demographic in the current UA workforce. Quite simply, the challenge to find an adequate replacement workforce with adequate skills and abilities in an expanding market, at the same time as the current workforce is quickly reaching retirement age, is going to be a daunting challenge. Flexibility in initial hiring classification and career progression paths are recognized workforce development tools that must be made available to MCAA employers if they are going to compete effectively with the open shop in the future. Moreover, MCA employers cannot rely on imported guest worker classifications to meet the domestic workforce needs on a sustainable basis. That would not be practically or politically feasible.

The MCAA Task Force also recognized that sub-journey worker classifications are becoming more common, and recommends an expansion of this trend in local collective bargaining agreements. Differentiated wage rates are becoming more common in local UA/MCA agreements, and are prominent in some widely recognized market resurgence efforts in the South, for example Atlanta and Houston. Also, other crafts are adopting alternate wage classifications, bringing substantial improvements in market share in some very heavily non-union areas. For example, the IBEW/NECA "construction wireman" sub-journeyworker classification is returning quick market recovery gains in South Florida and other areas of the country where union-sector market share has been very weak for many years.

The UA's Suggested Guidelines for the Use of the UA Standard Form of Agreement contains the following general point of agreement, as follows: "*Competitive Crew Costs. It is suggested that every effort be made to place the UA employer "competitive" with locally established wage rates. It is therefore recommended that provisions such as "other classifications" be included in every UA agreement. These provisions will allow for that portion of the trade, which requires lesser skills to be performed at lower costs. These provisions will produce competitive crew costs.*"

**Prevalence:** In a study of the Construction Labor Research Council's (CLRC) database of 1,061 Building Trades construction collective bargaining agreements and 109 UA agreements, CLRC reports that 21% of UA agreements (22 agreements) contain sub-journeyworker categories, as compared with 12% of the other 1,061 agreements in the database (127 agreements). (Note: The CLRC database does not contain all UA

agreements or all other building trades agreement, but it is a large sampling of both nevertheless.)

**4.2 Other payment improvements - Elimination of fringe contributions on hours paid rather than hours worked** -- The Task Force recommended that local areas consider two fairly common, but not widely adopted payment reforms relating to fringe benefits to improve union-sector competitiveness, while not diminishing overall workforce standards. First, the Task Force recommended that local areas consider eliminating the payment of fringe benefit contributions on hours paid rather than hours worked. That practice compounds the already steep costs of the industry-leading health and welfare payment that are common in pipe trades agreements, as well as the cost of unavoidable overtime work, and diminishes the competitiveness of the union-sector relative to the open shop without appreciably elevating workforce standards. The *United Association Standard Form Agreement*, endorsed by MCAA and the PHCC, says that: “*Fringe contributions, including vacation, shall be paid only on actual hours worked.*”

The updated CLRC analysis of 2008 agreements shows that 41% of the 109 UA agreements in the CLRC database in 2008 call for pension contributions based on hours paid (not hours worked), as compared with just 28% of all 1,061 building trades construction agreements. For health and welfare contributions, 37% of the UA agreements call for contributions on hours paid, as compared with 20% of building trades agreements overall.

**4.3 Elimination of daily overtime premium pay** -- Similarly, the Task Force recommended that local bargainers seek to eliminate the practice of paying daily as opposed to weekly premium pay for overtime hours. That is, workers should be entitled to overtime pay only after working 40 hours in a single week, rather than after 8 hours in any one day. Again, the practice of permitting OT premium pay after 8 hours is a competitive impairment relative to the open shop, which only is required to pay OT after 40 hours in a week. Daily OT premium pay also relates substantially to unscheduled absences and consequent project productivity losses, as daily OT pay can promote unscheduled absences and bring down overall project productivity to the detriment of the contractor, other workers and the owner overall. Simply put, daily overtime pay can promote unscheduled absenteeism that workers wouldn't otherwise be able to afford, and the consequent negative impact on job site productivity reflects poorly on overall performance and customer satisfaction to the much greater detriment to the whole as compared with the unfair benefit to the individual.

The *UA Standard Form of Agreement* contains the following provision on overtime generally, Article VIII, Work Rules and Miscellaneous Provisions, Section 1(i): *It is agreed that overtime is undesirable and not in the best interest of the industry or the craftsmen. Therefore, except in unusual circumstances, overtime will not be worked. Where unusual circumstances demand overtime, such overtime will be kept to a minimum.*”

**4.4 Elimination of shift differential pay** - Similarly, pay for shift differentials is a competitive disadvantage that is far outweighed by any significant countervailing benefit to the worker. As increased flexibility in owner project scheduling is ever more commonplace, local unions should be prepared to man all the work they claim at the negotiated rates. (The *UA Standard Form of Agreement*, Article IX, calls for 7.5 hours of work on a second shift, and 7 on a third shift (both at 8 hours pay), but does not set out any greater per hour rates. An addendum to that section calls for “flexibility and creativity” in creating shifts.)

**4.5 Health and pension benefits best practices** - On pension and health and welfare benefits plan administration, the MCAA Market Recovery Task Force recommended that local bargaining parties (settlors of plans) as well as trustees continually monitor best practices of plans nationwide to be alert for benefits improvements and savings that will help ensure the continuing efficacy of those industry-leading fringe benefits well into the future. For example, health purchasing cooperatives continue to prove to be effective ways to manage benefits administration to return real value to participants and beneficiaries while at the same time reducing costs. There are several areas nationally where pipe trades plans are prominent in health care purchasing groups -- Washington DC and Minnesota, for example. In pension administration, settlors and trustees must continually evaluate their plans in the exercise of their separate and appropriate roles and continually assess the impact of funding status on the long-term effect on organizing and plan participation, and the effect on contributing employer market position. Regulatory mandates continue to force recognition of plan liabilities in ways that could adversely affect contributing employer competitiveness in the market and hence jeopardize participation in the plan.

**4.6 Updating the apprenticeship system** - The Task Force noted that local bargaining teams and apprenticeship fund trustees should constantly look for ways to update the apprenticeship and journeyworker upgrade training system. Again, workforce demographics and the changing preferences of Generations X and Y and the Millennial workforce generation demand that the outdated terms and practices of the apprenticeship system be updated to attract the type of recruit who has the skills and abilities to learn and perform the high-skill, college-accredited type of training the UA/MCAA program requires. The proud tradition of our past training programs will mean little in the long-term if we fail to fill our ranks with the best-skilled recruits who alone will ensure its success going forward. Efforts to reach out to the domestic workforce, including women and minorities, must be redoubled, as the ranks of the skilled workforce cannot be filled with guest workers from overseas on a sustainable basis. Moreover, with U.S. Labor Department and Federal Apprenticeship Committee proposed changes to the overall structure of Federal apprenticeship programs, including a proposal to recognize qualification-based progression on a par with time-based programs, and another proposal to grant nationwide registration and reciprocity to new programs, the challenges to the UA/MCAA apprenticeship program to keep pace with changes and expand recruiting effectiveness are growing every day from a variety of sources. Simply put, the apprenticeship system has to be overhauled to appeal to the new workforce and the



employment market of the future, which will no longer bend to accommodate the traditions of the past.

**4.7 Workforce deployment and credentialing - Unfettered deployment/portability of manpower** - The MCAA Market Recovery Task Force unanimously agreed that unfettered portability of manpower is a primary objective to promote in local collective bargaining as a way to ensure effective competitiveness with the open shop. Similarly, the group agreed that requirements for local union approval for portability of union manpower is a substantial hindrance to robust competitiveness of union-signatory firms that misplaces emphasis on policing signatory firms over more effective ways to address organizing the non-union sector of the industry. Others have noted that portability of manpower is another way of addressing a matter of local union administration. That is, the industry competitiveness of local signatory employers is best served by local union jurisdictions that are broad and co-extensive with the natural economic market in the area. When there are too many local union jurisdictions in a consolidated economic market, signatory employers are bound by inefficient administrative accommodation and an over-emphasis on administering the local union's institutional interest, rather than manning the work and efficiently meeting the market demands for the work the union claims in the area overall. Connecticut's statewide consolidation of local union jurisdiction is the best example of the efficacy of this approach in recent years, with substantial market recovery gains logged there after consolidation into a single statewide local in the mid 1990s. Local unions, just like small and medium size businesses, must recognize that there are economies of scale in their operations as well. Too-small units serve only the institutional interests of those units, not the economic interest of the market or their members in strong collective bargaining units overall. Similarly, the cohesion of small local multiemployer bargaining units may not be the best economy of scale for union-sector employers to serve the market efficiently.

**4.8 Unfettered portability of UA fabricated systems** - The MCAA Task Force also strongly recognized the essential importance of freeing up portability of UA fabricated pipe assemblies and systems to improve the competitive position of signatory employers. The trends in building information modeling and off-site fabrication are strong and getting stronger. Again, pre-fabrication and modular assemblies are being enabled by BIM modeling and owner purchasing directives, and designers and project managers are advocating for ever greater use of off-site fabrication and modular construction and prefabrication as ways to address the skilled workforce shortages in the field. More and more, canny open-shop firms are selling pre fabrication modular construction into this market with strong A/E, CM, GC and owner support and encouragement. The union-sector alone cannot resist the economic advantages of technological changes and improvements in productivity; resistance in the past every time has resulted in lost market share. Moreover, given the adverse demographics in pipe trades employment, local labor/management bargaining should no longer focus on limits of importation of prefabrication as a matter of preserving bargaining unit field installation work. Instead, the focus should be on maintaining union-sector competitiveness. In the end, an expanding union-sector fabrication market will save many more union-sector field installation jobs than it costs; creative adaptation might even find ways to help expand the

market. (The *UA Standard Form of Agreement*, Article XIII, Fabrication, section 2, says: *All pipe may, at the option of the Employer, be fabricated on the job or in a shop by journeyman employees who are covered by a UA Agreement.*”

A CLRC analysis of its contracts database in 2008, shows that 41% of the 109 UA agreements (44 contracts) set out some limits on fabrication, as compared with just 1% of the 1,061 building trades agreements overall.

**4.9 Other workforce deployment flexibility options** -- The Task Force also recommended consideration of several other workforce deployment flexibility options as way to bargain a flexible local agreement that improves competitiveness of the union-sector. The adoption of the *UA and MCAA Standard for Excellence* is a groundbreaking recognition that the local bargaining unit (union and employers) has a duty and interest to improve the productive performance of the whole, as well as addressing the performance of individual members. Put more plainly, local unions and their members and local employer groups and their members are much better served collectively and singly by an organized emphasis on collective performance standards and improvements. That is the most promising aspect of the Standard for Excellence – the interests of the whole are put on a par level of importance with the interests of individuals. So in that context, the Task Force recommended that various aspects of positive individual performance be recognized as derived from the SFE and be considered for inclusion in local bargaining agreements, including:

1. Call-by-name referral from the hiring hall, to recognize positive performance;
- 2) Referral preference for individuals with ongoing training and career education, to encourage same;
- 3) No seniority preference in order of layoff, to again reward individual performance; and
- 4) Requiring workers to furnish small tools.

The updated CLRC analysis of its 2008 contracts database shows that 42% of the 109 UA agreements (45 contracts) in the database permit call-by-name referral, as compared with 35% of all other 1,061 building trades agreements.

**4.10 Improving supervisory effectiveness** -- *The UA and MCAA Standard for Excellence* emphasizes improvements in company supervisory effectiveness as strongly as it stresses the need for individual worker productivity. The SFE recognizes that each depends on the other. The International Training Fund has acted on that key recognition that a large part of the solution to the industry’s workforce deficit crisis is to improve the effectiveness of the current workforce. The MCAA Task Force agrees that one of the greatest opportunities for workforce productivity improvement lies through improving jobsite supervisory effectiveness. The UA and MCAA have recognized that foreman training and certification is the best way to unlock that untapped reservoir of productivity improvement.

**4.11 Foreman Training and certification** -- The new *UA/MCAA Foreman Training and Certification Program* is a key element in that process. The program has an up-

to-date curriculum that emphasizes all the important technical and soft skill training and ability foremen need to manage projects effectively and productively. The Standard for Excellence itself is part of the curriculum, and the course emphasizes the paramount need to run the work to exceed the customer's expectations as the best way to secure workers', the local union's and signatory employers' growing market share. Moreover, the ITF has gone to considerable expense and effort to develop a state-of-the-art certification test for foremen, the first of its kind in the industry. The MCAA Market Recovery Task Force strongly recommends that local bargainers consider adopting the Foreman Training and Certification Program in local bargaining agreements. The curriculum and test have been validated by a professional employment-testing firm under the rigorous standard of the Federal anti-bias civil rights laws. So, if local area agreements adopt the curriculum and test (under certain minimum validation standards, and it is conducted with proper safeguards) then they will be able to have confidence that their program procedures will be judged as validated under the Federal Equal Employment Opportunity laws. The MCAA Task Force also noted that the SFE implies that company-specific work rules, other than procedures laid out in the bargaining agreement, are to be adhered to and that there are no limits – and should continue to be no limits -- placed on work duties that supervisors can perform under the SFE.

**4.12 *Updating local collective bargaining structures*** - The MCAA Market Recovery Task Force discussed the historical unequal balance of bargaining power in local collective bargaining relations (See point 1.1 above), with the local unions in the stronger and unified position of being certified or recognized as the exclusive bargaining representative during the term of the agreement or negotiations, while the management multiemployer unit enjoys no parallel exclusive claim to enforceable consolidated representation recognized in contract or labor law. So, management is vulnerable to being whipsawed and wracked by competitive market/customer pressure within its ranks and by interim and retroactive agreements offered by the union to individual firms, and even competitive agreements with other outside firms or bargaining units. Over the long-term, abuse of that that unequal balance of power has diminished strong and effective bargaining stances and ultimately diminished area-wide agreement competitiveness. Moreover, potential employer bargaining unit members over time grow increasingly wary of participating in a system that presents such fundamental obstacles to well-ordered negotiations and ongoing customer service. The potential defensive options available to management, (short of labor policy recognition of exclusive representation for the management unit in public law), is to incorporate interest arbitration in the local agreements with the concomitant no-strike/no-lockout pledge to even up the relative bargaining strength of both sides. That type of bargaining arbitration agreement ensures a mutually agreed settlement mechanism that prevents abuse of the imbalance in bargaining power and thereby improves the long-term viability of the entire bargaining unit.

**4.13 *Interest arbitration clause*** -- MCAA's strongly recommends that local bargaining parties consider adopting the Industrial Relations Council second-tier bargaining interest and grievance arbitration mechanism endorsed by the UA and the MCAA for

that purpose. The IRC is a fair and balanced, professional forum where settlements are agreed to in the best interests of all parties. Moreover, that type of arbitration will assure customers and the industry at large of stability in collective bargaining relations that will serve the long-term best interest of all parties, including owners and customers, and beneficiaries of the system over the long-term. Furthermore, in most instances, the union garners a firmer commitment to continuing bargaining obligations from the multiemployer unit because of the legal effect of the arbitration agreement. At the same time, the union merely forgoes the use of the ultimate economic weapon of the strike, which over the long term is only detrimental to regaining market share. (The *UA Standard Form of Agreement* calls for interest arbitration and a no-strike/no-lockout clause, Articles XIV and XV.)

CLRC's analysis of its 2008 construction contracts database shows that fully 70% of the 109 UA agreements in the database have no-strike clauses (with 16% setting the Industrial Relations Council as the interest arbitration mechanism), as compared with 83% of the other 1,061 building trades agreements with no-strike clauses.

**4.14 *Most favored nation clause*** - A parallel protection from the unequal balance of bargaining power is for the local collective bargaining agreement to include a "most-favored-nation" clause, whereby the local union agrees to offer any more favorable terms allowed subsequently in the area to other signatory firms on the same basis to the other area signatory firms. This is a type of best-deal, bargaining warranty that may be common in commercial agreements. (This type of clause is recommended and included in the *MCAA/UA Standard Form of Agreement*, Article XVIII, Other Agreements, Section 18.1, and 18.2 as follows:

**4.15**

*Section 1. No Contractor bound hereunder shall be required to pay higher wages or be subject to less favorable working conditions than those applicable to other contractors employing persons represented by the Union performing such similar work in the same jurisdiction, except as provided in this Article.*

*Section 2. Where the United Association makes an agreement with a National Contractor which is applied on a particular job, no signatory Contractor on that job shall be required to pay higher wages or be subject to less favorable working conditions than those applicable to the national contractor; but the terms of the national Agreement shall not apply elsewhere in this jurisdiction."*

**4.16 *UA/MCAA Standard for Excellence*** – MCAA has previously recommended the adoption of the SFE in local collective bargaining. The SFE's manifold benefits and groundbreaking approach to collective responsibility for union-sector productivity are detailed generally above. MCAA recognizes, along with the UA, that enforcement and administration of such an approach may involve some initial testing and adaptation. MCAA has endorsed the third-party arbitral panel disciplinary mechanism set out by the UA initially. MCAA has produced a legal memorandum on implementation and enforcement of the SFE that parallels the opinion produced by the UA. As mentioned above, many of the items recommended by the Task Force are expressly outlined or contained in the in the SFE, and are being implemented,

including ongoing workforce training and education, foreman training and certification, drug testing and others.

**4.17 UA/MCAA Drug Testing Policy** - MCAA and the UA have produced a detailed Substance Abuse Testing and Treatment Policy that has gained substantive reciprocity with the national drug testing policy implemented by the national Building and Construction Trades Department of the AFL-CIO that was developed in concert with the Construction Users Roundtable (CURT). Some administrative details on database administration remain to be worked out between the UA/MCAA policy administration and the BCTD's policy – but in substantive terms, the documents are in agreement. Furthermore, both the UA and the MCAA recommend adoption of the UA/MCAA policy and it has indeed gained adoption in a great many local agreements nationally over the past several years. The policy is recommended in the *UA Standard Form of Agreement* (Article V, section 9), and virtually all other UA national agreements. The UA/MCAA adoption of the drug testing policy is a market-based recognition that workforce drug testing is virtually universal for all employment in the U.S., and more particularly so for safety-sensitive work, such as job site construction employment. The joint MCAA/UA policy also is provided in the specific detail necessary to gain construction user/owner recognition and reciprocity, ultimately saving UA workers and MCAA employers the inconvenience and cost of duplicative testing, while not sacrificing safety compliance in the least.

**4.18 Recognizing local employer industry funds** - The MCAA task Force recommended that local collective bargaining groups continue to recognize the vital role that local industry funds play in workforce development and maintaining workforce standards through many aspects of local collective bargaining agreement administration. Moreover, local industry funds provide a broad range of other industry management development activities that are crucial to maintaining the strength of local multiemployer collective bargaining in any particular area or region. Continuing contributions to local industry funds in all area collective bargaining agreements is essential to maintaining that strength for the industry overall.

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