Carpenters Local No. 491
Training Fund

Board of Trustees Meeting

September 16, 2020

CARPENTERS LOCAL NO. 491 TRAINING FUND
AGENDA
SEPTEMBER 16, 2020

A. ROLL CALL

B. MINUTES OF THE JUNE 19, 2020 BOARD MEETING

C. ADMINISTRATIVE REPORTS

1. Statement of Changes In Fund Balance (Apr - Jun, 2020)
2. Bills to be Approved and Paid (September 16, 2020)

D. UNFINISHED BUSINESS

1. Delinquent Employer Listing
2. Payroll Audits
3. Buildtask 1st Amendment to Settlement Agreement

E. NEW BUSINESS

1. Update Letter
2. Questions
3. Date of Next Meeting - Dec., 2020

CARPENTERS LOCAL NO. 491
TRAINING FUND

REGULAR MEETING OF THE BOARD OF TRUSTEES

June 19, 2020

MINUTES

A regular meeting of the Trustees of the Carpenters Local No. 491 Training Fund was held at 9:00 a.m. on June 19, 2020, via telephone conference call. Present on the call were the following Trustees:

UNION TRUSTEES	EMPLOYER TRUSTEES
Sandy Forstner	Ken Bisch was absent
Bill Sproule	Mike Goodwin
Robert Tarby	Todd Weitzman was absent

Also present on the call were Albert Kroll, Esq., Counsel for the Union; David J. Jensen and Dawn Welch, Administrative Manager; Ira Marc Miller, CPA; Pete Tonia; and Steven I. Batoff, Attorney. Mr. Batoff stated that at the June meeting of each year, the chairman and secretary alternate between employer and union. Mr. Sproule was selected to be chairman and Mr. Weitzman was selected to be secretary.

The following matters were discussed with the indicated action taken:

1. The minutes of the meeting of March 20, 2020, were approved as read.

2. The Administrative Manager reviewed with the Trustees the Administrative Manager's report for the three months ending March 31, 2020. The Fund balance as of March 31, 2020, was $23,528.92. Upon motion duly made by Mr. Tarby and seconded by Ms. Forstner, the Administrative Manager's report was unanimously approved by the Trustees.

3. The Administrative Manager then reviewed with the Trustees the bills to be paid, as listed in an attachment to these minutes. Upon motion made by Mr. Tarby and seconded by Mr. Goodwin, the Trustees unanimously approved payment of the aforementioned checks.

4. The following Delinquent Contractor Listing was reviewed by the Trustees and the Administrative Manager:

    NONE

5. The Administrative Manager reported that there was no update as to payroll audits.

6. Mr. Batoff reported that he had prepared a first amendment to the settlement agreement with Buildtask. Mr. Batoff noted that he had not yet received an executed copy of the first amendment.

7. Mr. Batoff reviewed with the Trustees a draft of an amended record retention policy. The Trustees, upon motion duly made by Mr. Tarby and seconded by Mr. Goodwin, unanimously approved the amended record retention policy.

8. The Administrative Manager discussed with the Trustees an ACH block for the Plan account at Bank of America. There will be a $31 monthly fee in order to block any ACH outside transaction. Upon motion duly made by Mr. Tarby and seconded by Ms. Forstner, the Trustees unanimously agreed to the ACH block.

There being no further business, the meeting was thereupon adjourned at 9:24 a.m. with the next meeting scheduled for September 16, 2020, at 9:00 a.m.

Respectfully submitted,

Steven I. Batoff
Secretary of the Meeting

CARPENTERS LOCAL NO. 491 TRAINING FUND
STATEMENT OF CHANGE IN FUND BALANCE - CASH BASIS
FOR THE SIX MONTHS ENDED JUNE 30, 2020

	April	May	June	Year To Date
Additions				
Employer Contributions - Baltimore	$ 4,703.00	$ 15.25	$ 284.25	$ 23,821.11
Employer Contributions - Washington	16,227.27	1,133.00	1,224.50	63,694.42
Interest Income - Checking	-	-	-	-
Total Additions	20,930.27	1,148.25	1,508.75	87,515.53
Deductions				
Administration	1,750.00	-	-	2,278.00
Advertising	-	-	-	-
Audit Fees	-	-	-	-
Payroll Audit	-	-	-	7,265.68
Committee Meeting Expenses	-	-	-	-
Conference	-	-	-	-
Drug Testing	-	-	-	-
Fidelity Bond	-	-	-	500.00
Fiduciary Liability Insurance	-	-	-	336.06
Cyber Liability Insurance	-	-	-	-
Legal Fees	2,760.00	966.00	1,975.05	11,743.15
Settlement	-	-	-	-
Office Expenses	-	-	-	-
Dues	-	-	-	-
Petty Cash	-	-	-	-
Postage	-	-	-	-
Printing	-	-	1.37	3.13
School Supplies	-	-	-	-
Training Class Expense	-	-	-	-
Trainee Committee Fees	-	-	-	-
Transfer to JCAE	16,420.26	182.25	-	65,686.39
Transfer to BCJAC	-	-	-	-
Bank Service Charges	-	-	-	-
Total Deductions	20,930.26	1,148.25	1,976.42	87,812.41
Net Increase (Decrease)	$ 0.01	$ -	$ (467.67)	$ (296.88)
Fund Balance - December 31, 2019				23,358.14
Fund Balance - June 30, 2020				$ 23,061.26

Statement of Fund Balance - Cost Basis	
Cash - Bank of America - Operating	$ 23,061.26
Due to Benefit Fund	-
Due To JCAC	-
	$ 23,061.26

CARPENTERS LOCAL NO. 491 TRAINING FUND
BILLS TO BE APPROVED AND PAID
OPERATING ACCOUNT
September 16, 2020

Payee/Purpose	Period	Check #	Amount
1. Associated Administrators, LLC			
3rd Quarter Administration Fee	7/20 - 9/20	1304	1,750.00
2. Batoff Associates, P.A.			
Legal Fees	6/20	1305	1,828.50
3. Associated Administrators, LLC			
Printing - Envelopes		1306	2.29
4. Batoff Associates, P.A.			
Legal Fees	7/20	1307	2,035.50
5. Ira Marc Miller & Company, P.A.			
Progress Billing - Audit	12/19	1308	1,000.00
			$ 6,616.29

CARPENTERS DELINQUENCY LIST
AS OF
SEPTEMBER 8, 2020

1) If Local has "X" in a block, please indicate "Worked" or "No Men"
2) Please fax updates to Ramona at 410-683-7794

	See Instructions Above			
EMP #	Balt.	Wash.	COMPANY NAME	WORK MONTHS DELINQ.

LOCAL 491 AUDIT UPDATE

EMPLOYER NAME	INITIAL AUDIT DATE(S)	AUDITOR	TOTAL DUE	COMMENTS 1	COMMENTS 2	AUDIT YEAR
4TH ROUND (2019)						
BRUNSWICK WOODWORKING	IN OFFICE	J DOBBS		AUDIT IS COMPLETE; GOOD AUDIT; REPORT TO BE FORWARDED	FINAL REPORT FORWARDED ON 9/9/2020	1/1/2015-6/30/2019

5TH ROUND (2020)						
ARATA EXPOSITION SERVICES				SCHEDULING	AWAITING AUDIT RECORDS	2015-2019
BREDE EXPOSITIONS SERVICES	8/4/2020	N WALKER		INFORMATION RECEIVED 8/4/2020	IN HOUSE AUDIT IN PROGRESS	2015-2019
COASTAL INTERNATIONAL, INC.	6/9/2020	A PATINO	$21,812.22	INFORMATION RECEIVED 6/9/2020	A BILLING FOR NON-UNION DC HOURS HAS BEEN MADE; FINAL REPORT FORWARDED ON 9/9/2020, $21,812.22 BILLING	2015-2019
CZARNOWSKI DISPLAY SERVICE	6/3/2020			INFORMATION RECEIVED 6/3/2020	IN HOUSE AUDIT IN PROGRESS	2015-2019
FREEMAN EXPOSITIONS INC				SCHEDULING	AWAITING AUDIT RECORDS	2015-2019
GES EXPOSITION SERVICES				SCHEDULING	AWAITING AUDIT RECORDS	2018-2019
NTH DEGREE				SCHEDULING		
NEXXTSHOW EXPOSITION SERVICES, LLC				SCHEDULING		
RENAISSANCE MANAGEMENT, INC.				SCHEDULING		
SHEPARD CONVENTION SERV, INC.				SCHEDULING		

BATOFF ASSOCIATES, P.A.
SUITE 1510
36 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201-3014

STEVEN I. BATOFF
SBATOFF@BATOFFASSOCIATES.COM
ADMITTED IN MD AND DC

JUSTIN A. BATOFF
JBATOFF@BATOFFASSOCIATES.COM
ADMITTED IN MD AND OH

STEPHANIE E. BLAIR
SBLAIR@BATOFFASSOCIATES.COM

JAMES J. MCKITTRICK, JR.
JMCKITTRICK@BATOFFASSOCIATES.COM

TELEPHONE 410-881-8210
FACSIMILE 443-438-1554
www.batoffassociates.com

September 4, 2020

VIA EMAIL ONLY to davidj@associated-admin.com
David Jensen
Associated Administrators, LLC
911 Ridgebrook Road
Sparks, Maryland 21152

Re: Plan Trustees Entitled to Arbitration Award in Case Against Employer for Failing to Provide Books and Records for the Purpose of Conducting Audit – Carpenters Local No. 491 Annuity Plan; Carpenters Local No. 491 Health and Welfare Plan; Carpenters Local No. 491 Pension Plan; Carpenters Local No. 491 Training Fund

Dear Dave:

Multiemployer employee benefit plans—whether they are retirement plans or health and welfare plans—often seek to resolve disputes with employers through arbitration. A recent case decided by the United States District Court for the Southern District of New York provides a textbook illustration of how a court determines whether to confirm an arbitration award in a case brought by plan trustees against an employer for failing to comply with an audit request.

The case

The case, *Trustees of New York City District Council of Carpenters Pension Fund, Welfare Fund, Annuity Fund, and Apprenticeship, Journeyman Retraining, Educational and Industry Funds, et al. v. Concrete Brothers Construction, LLC*, originated as a request for an audit to determine whether an employer had remitted the proper amount of contributions to a group of multiemployer funds governed by the Employee Retirement Income Security Act of 1974. After arbitration proceedings and the District Court's subsequent confirmation of the award, the trustees of the plaintiff funds (the "Trustees") were ultimately awarded (1) the estimated principal deficiency of \$150,071.19, (2) interest of \$12,610.06; (3) liquidated damages of \$30,014.24; (4) court costs of \$400; (5) attorney's fees of \$1,500; and (6) arbitrator's fees of \$500.

In October 2017, Concrete Brothers Construction executed a Memorandum of Agreement with the multiemployer funds, agreeing to be bound by the terms of several different collective bargaining agreements (the "CBAs"). One of the CBAs required employers to furnish books and payroll records when requested by the Trustees for the purpose of conducting an audit to ensure compliance with the required benefit funds contributions. Also pursuant to the CBAs, which require parties to submit to arbitration proceedings in the event of a dispute, Concrete Brothers agreed to the funds' collection policy, which states:

> [i]n the event that an employer refuses to permit a payroll review and/or audit upon request . . . the Fund Office shall determine the estimated amount of the employer's delinquent contributions based on the assumption that the employer's weekly hours subject to contributions for each week of the requested audit period are the highest number of average hours reported per week for any period of four consecutive weeks during the audit period.

In order to determine whether Concrete Brothers had remitted the proper amount of contributions to the funds, the Trustees requested an audit for the period beginning October 26, 2017. Concrete Brothers failed to provide the Trustees with its books and records, so the Trustees initiated arbitration proceedings.

Holding

Despite being provided adequate notice for the hearing, Concrete Brothers failed to show up to the arbitration. The arbitrator found that Concrete Brothers violated the CBAs when it failed to permit the Trustees to inspect its books and records, then ordered Concrete Brothers to pay the funds a total of $195,095.49, consisting of the estimated principal deficiency, interest, liquidated damages, court costs, attorney's fees, and arbitrator's fees.

The U.S. District Court for the South District of New York confirmed the arbitrator's award. Citing the Supreme Court of the United States, the Court explained that district courts "are not authorized to reconsider the merits of an award," and "as long as the arbitrator's award 'draws its essence from the collective bargaining agreement,' and is not merely 'his own brand of industrial justice,' the award is legitimate." Since the arbitrator found, based on "substantial and credible evidence," that Concrete Brothers violated the CBAs by refusing to allow the Trustees to examine its books and records, the District Court essentially treated the case as open-and-shut.

Takeaways

The first takeaway from this case is that collective bargaining agreements may include language that penalizes employers for failing to provide their books and records for the purpose of conducting an audit related to contributions. An employer may refuse to furnish its books and records if it thinks it can get away with it, but including a penalty in the event of such a refusal can help motivate an employer to comply. Please note that the District Court's opinion does not indicate whether the arbitrator in this case could have awarded a greater sum if the collection policy had provided for a different method of estimating the amount of an employer's delinquent contributions.

The second takeaway is that district courts typically have to defer to an arbitrator's independent determination in disputes involving the terms of a collective bargaining agreement. An arbitration proceeding and subsequent court hearing to confirm the award is much more likely to be less costly than a lawsuit that is decided entirely in court. In this case, the arbitrator simply interpreted the plain language of the CBAs when determining the award, which the District Court—compelled by Supreme Court precedent—had to confirm. A dispute that began with a lawsuit and involved subsequent proceedings in the District Court may have led to a judge considering whether the stated penalty in the CBAs (an estimation based on the employer's highest number of average hours reported per week for any period of four consecutive weeks during the audit period) was "reasonable." When judges decide to consider whether something is "reasonable," attorneys' fees often go up.

Even though this decision comes from the U.S. District Court for the Southern District of New York, whose jurisdiction does not extend to Maryland or the Fourth Circuit, of which Maryland is a part, it is still important to make note of it because federal circuit and district courts use each other's decisions as persuasive guidance.

If you have any questions, or would like to discuss this further, please do not hesitate to contact me.

Sincerely,

James J. McKittrick, Jr.

Cc: Trustees