

Utilizing the Industrial Relations Council for the Plumbing and Pipe Fitting Industry to Effectively Resolve Labor-Management Disputes



MCAA

Mechanical Contractors Association of America

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I. Introduction and History of the Industrial Relations Council

The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (“UA”) and its signatory contractor partners are facing historic levels of labor and construction demand, which has allowed them to make great strides in maintaining and expanding union market share. The stability associated with a unionized workforce is undeniably critical to market share maintenance and gains. This stability assists in the organization of new signatory contractors and encourages Owners to commit to union labor on their projects. Critical to that stability is the ability for labor and management to have access to consistent, cost-effective, efficient and reliable resources for resolving disagreements both on the jobsite and in collective bargaining.

One leading, government-sponsored resource for this purpose, the Federal Mediation and Conciliation Service (“FMCS” or “Agency”), has effectively been shuttered by the current Administration, leaving parties who have relied on FMCS to help mediate grievances and difficult contract negotiations with few options. This White Paper highlights how the Industrial Relations Council (“Council” or “IRC”) can fill this gap and assist UA local affiliates and Mechanical Contractors Association of America (“MCAA”) signatory contractors by resolving collective bargaining negotiations and grievances quicker, more affordably, and more effectively.

The IRC was established in the 1950s to provide a mechanism for avoiding strikes and lockouts and settling grievances justly and in a way approved by both labor and management. The Council is jointly sponsored by the UA on the one side and the MCAA, and the Union-Affiliated Contractors (“UAC”) of the Plumbing-Heating-Cooling Contractors Association on the other side and consists of equal Labor-Management representation. The IRC is endorsed by, among others, UA General President, Mark McManus, and the MCAA Executive Committee and its Chief Executive Officer, Tim Brink.

The IRC appoints four UA Local Business Managers and four representatives from MCAA or UAC Contractors (the “Directors”) to oversee each matter, drawing upon the knowledge and experience of some of the most reputable leaders within the ranks of the UA and MCAAⁱ. The IRC’s Directors are active union representatives and contractors, which means that the Directors not only have “skin in the game” but they also understand the unique challenges faced by locals and signatory contractors in the Plumbing and Pipe Fitting Industry.

UA locals and signatory contractors can use the services of the IRC for free, whether they are seeking binding resolution of collective bargaining negotiations or grievances. The parties only have to pay their costs associated with travelling and attending IRC hearings. The IRC has a flexible schedule, meeting as necessary to address the needs of the locals and

contractors, and further makes every effort to meet in cost-effective and centrally located meeting venues like Dallas, Orlando, Chicago, and Denver.

The IRC's services are twofold: (1) To settle disputes arising from collective bargaining where the parties cannot reach agreement ("negotiation matters"); and (2) To serve as impartial arbitrators for grievances, aside from jurisdictional disputes ("grievance/arbitration matters"). What makes the IRC unique is that when a local and a contractor seek the IRC's intervention to resolve outstanding negotiation matters, the Directors do not participate as neutrals, but step into the shoes of their respective labor and/or employer cohorts and negotiate a resolution on their behalf. When the Council hears an "arbitration/grievance dispute," it acts as an impartial Arbitration Board to resolve the matters presented to it, the way that a traditional third-party neutral would.

Since its inception, the IRC has successfully resolved a total of 470 grievance and collective bargaining matters. On average, the Council holds 5-6 hearings per year in addition to the 5-10 inquiries per year that are resolved through discussion with the Council and between the parties without the need for a hearing. Unlike the labor-management dispute resolution tribunals sponsored by other trades, the IRC typically hears no more than two disputes in any one session, allowing the Directors to give each dispute individualized attention and to ensure that each dispute is judged on its own merits.

Given the instability surrounding the future of FMCS and the relative benefits of the IRC over arbitration, as discussed in detail in Sections III-V below, locals and signatory contractors are strongly encouraged to use the services of the IRC as a cost effective and efficient means to resolve their disputes.

II. Rules, Regulations, and Policies of the Council

Whether the dispute involves a negotiation or a grievance/arbitration matter, the parties only appear before the IRC if they have both agreed to do so. Typically, the parties make a joint submission to the Secretary of the Council, outlining the unresolved issues that the parties want the Directors to consider. If the parties cannot agree on the unresolved issues to be considered by the IRC within ten (10) working days, they complete separate submission forms and submit them to the Secretary. If only one party completes a submission form, the IRC will not hear the matter unless directed to do so by a court or government agency. In some circumstances, parties may be contractually obligated to submit a matter to the IRC if their local agreement requires that unresolved grievances or negotiation matters are resolved by the IRC.

Once the parties have submitted the required submissions forms, they are notified of the date and place of the hearing, which usually takes place within thirty (30) days from the Council's receipt of the submission form(s). For both negotiation and

grievance/arbitration matters, parties must sign a “Statement” summarizing the conditions under which the IRC will proceed to hear the matter and appoints Directors to the Negotiation Board or Arbitration Panel, as appropriate. The parties are urged to continue settlement efforts between themselves all the way up until the time the Council issues a decision. In order to encourage ongoing local settlement efforts, the IRC allows the parties to mutually consent to withdraw any submitted matter at any point prior to the IRC’s decision.

The Directors issue a written decision on both negotiation matters and grievance/arbitration within forty-eight (48) hours after the presentation/hearing has closed.

A. Negotiation Matters

After the submission of the unresolved bargaining matter(s) to the IRC, each party must provide written briefs supporting its position. These briefs must include the information and documents relevant to the parties’ bargaining history including: the last collective bargaining agreement, the proposals made by the parties during bargaining, any tentative agreements reached in bargaining, as well as the wage rates and benefits of building trades’ mechanics in the local area (if wages are at issue). The parties are provided copies of each other’s briefs to review and prepare before the IRC hearing.

Each party must have a representative appear before the IRC on the hearing date. This representative argues their side’s case by providing verbal support to their party’s brief and by providing the Directors with any additional information that they may need. The representative doesn’t need to be an experienced debater or public speaker, and in fact the use of attorneys at the hearing is strongly discouraged. The IRC will not proceed with one-sided representation, nor will it proceed if other legal action is pending, and it will not engage in collective bargaining if there is a strike, lockout, or other work stoppage occurring. The IRC further encourages settlement at all stages. The parties can request, and the Secretary encourages, a pre-hearing conference with its IRC representatives. In addition, the parties caucus with the Directors representing them (i.e., labor or management) throughout the hearing.

The IRC does not normally address items in the collective bargaining agreement that are not submitted to it. However, the IRC reserves the right to do so where necessary to accomplish an appropriate resolution of the issues. Directors will vote on the decision by secret ballot and any decision reached must be unanimously reached by labor and management. Once the Council reaches an agreement, the parties are bound to immediately put that agreement into effect.

B. Arbitration/Grievance Matters

The IRC uses the same procedures for an arbitration/grievance matter as a negotiation matter with three exceptions: (1) the Council acts as an impartial Arbitration Board; (2) it may reach a decision by simple majority vote; and (3) to preserve the impartiality and fairness of the Arbitration Board, no communication, written or oral, and no caucuses or pre-hearing conferences will be had between any party on the Arbitration Board that is not made fully known to all parties. Further, no meeting will be held between any party and a member or members of the Arbitration Board without the presence of all parties at such a meeting.

Once the Council reaches a decision by majority vote, the parties are bound to adhere to the arbitration award granted. The Council does not normally negotiate retroactive settlements, assuming that both parties have acted expeditiously. Parties bear the cost of enforcing the grievance/arbitration decision.

III. Recent Trump Administration Actions Against the Federal Mediation and Conciliation Service

FMCS was established under Title II of the Labor-Management Relations Act of 1947. The Agency was created to act as a neutral third-party in collective bargaining negotiations to prevent and minimize labor-management disputes that could disrupt the federal economy. It is statutorily mandated to minimize labor disputes in the private sector through mediation and arbitration services, and to support and encourage labor-management cooperation and initiatives.ⁱⁱ Relevant to the UA, the MCAA, and their affiliates, FMCS provides collective bargaining mediation for parties that are negotiating or renegotiating a collective bargaining agreement and an approved list of arbitrators vetted and maintained by the Agency that can be requested for an administrative fee.ⁱⁱⁱ

On March 14, 2025, the Trump Administration issued Executive Order (“EO”) 14238, titled “Continuing the Reduction of the Federal Bureaucracy,” announcing the Administration’s intention to eliminate—“to the maximum extent” possible—the non-statutory components and functions of several agencies, specifically naming FMCS as one of these agencies.^{iv} On March 26, 2025, the Agency placed almost all of its 220 employees on administrative leave.^v The Agency now only has about 10 to 15 active full-time employees, four of which are mediators.^{vi} This has rendered the agency essentially defunct and unable to provide labor-management cooperation services in accordance with its statutory mandate.

IV. Alternatives to FMCS

Other options to the use of FMCS include requesting a private arbitrator from the organizations such as the American Arbitration Association (“AAA”) or Judicial Arbitration and Mediation Services (“JAMS”). Parties can request a list or panel of available arbitrators

from AAA or JAMS for an administrative fee. Once the list is provided, the parties must agree on the arbitrator, which can be a lengthy and contentious process because the individual arbitrator must be vetted by both sides. More experienced arbitrators tend to charge more for their services and the hourly rate between arbitrators can vary significantly.

V. Comparative Benefits of the IRC

Submission to the IRC, as opposed to private arbitration, has significant comparative benefits, including the industry expertise of the Directors, the efficiency of decision making, and the significantly reduced cost to the parties. For collective bargaining negotiations, the IRC offers locals and contractors access to a group of like-minded decisionmakers that understand the Plumbing and Pipe Fitting Industry and who will bargain based on industry standards and economic reality. The Council can also go further than a mediator can and issue a binding agreement to be implemented immediately, avoiding lengthy and costly negotiations and unnecessary work stoppages.

A. Expertise

AAA and FMCS arbitrators are typically lawyers, who are largely unfamiliar with our industry and how it operates. Arbitrators often “split the baby,” resulting in flawed decisions that disappoint both parties. They have also been known to make decisions and award remedies that are not aligned with the collective bargaining agreement or our industry.^{vii} Generally, parties to private arbitration are represented by attorneys, which can sometimes add undesirable layers of legal formality and complexity to the proceedings,^{viii} whereas, as noted, the IRC is composed of business managers and UA signatory contractors with first-hand knowledge of our industry that can be applied in a practical manner to the issues at hand. The IRC’s strong track record of resolving disputes with reputable union and contractor leaders is one of the reasons why attendance and representation by attorneys at IRC hearings are discouraged.

B. Speed of Resolution

Requests for a list of arbitrators can be fulfilled by AAA within 48 hours, but the process of picking an arbitrator can be lengthy and scheduling the actual arbitration hearing depends on the chosen arbitrator’s schedule. This process typically takes longer than 30 days. FMCS arbitration policies and procedures require the arbitrator to issue the award no later than 60 days from the date of the closing of the record, but that date typically can, and is, extended by agreement of the parties.^{ix}

The AAA Labor Arbitration Rules require the award to be rendered “promptly by the arbitrator” and unless otherwise agreed to by the parties or specified by law, no later than 30 days from the date of closing the hearing or final statements and proofs.^x Expedited

arbitration promises an award within seven (7) days from the close of hearing.^{xi} Failure to adhere to the timeline of decision does not render the decision invalid, however, and it is not unheard of for decisions to be issued by arbitrators beyond or even far beyond the agreed-upon deadline.^{xii} *By contrast, parties presenting their dispute to the IRC do not have to go through the process of picking an arbitrator and are guaranteed a hearing on the case no later than 30 days from submission and a decision within 48 hours of the close of the hearing.*

C. Cost

FMCS arbitration panel requests cost \$100 or \$175, depending on the type of request made.^{xiii} This does not include arbitrator compensation and individual costs. The administrative fee for AAA costs between \$150 to \$375 per party, also depending on the type of request made.^{xiv} This does not include the hearing room rental and arbitrator compensation, which can be around \$300 to over \$1,000 per hour.^{xv} This also does not include the cost for the parties themselves to attend and the hourly cost of their attorney. *For parties utilizing the IRC, the only cost to parties for use of the Council is the cost of attending the hearing.*

VI. Conclusion

The IRC can settle collective bargaining disagreements and resolve grievances for UA local affiliates and signatory contractors in a way unparalleled by any other agency or entity. Experience shows that the IRC is able to deliver these services quicker, more cost-effectively and in a more industry-focused manner than the available alternatives. As local unions and contractors work together to meet the historic challenges ahead in the construction industry, including maintaining area standards and market share, they are strongly encouraged to consider utilizing the services of the IRC to resolve the labor-management disputes that will inevitably arise on the jobsite and in negotiations.

ⁱ Additional information about the Council, to include its procedures and policies, rules and regulations, and submission form, can be found at <https://industrialrelationscouncil.com/>.

ⁱⁱ 29 U.S.C. § 173.

ⁱⁱⁱ It is unclear how the mass dismissal of FMCS employees will affect the Agency's ability to maintain this list of private arbitrators and fulfill parties' requests for private arbitration panels.

^{iv} Exec. Order No. 14,238, 90 Fed. Reg. 13,043 (Mar. 14, 2025).

^v State of Rhode Island v. Trump, No. 1:25-cv-00128 (D.R.I. filed Apr. 4, 2015).

^{vi} State of Rhode Island, No. 1:24-cv-00128 (D.R.I. May 6, 2025) (granting preliminary injunction); Parker Purifoy, *Strike Risk Grows as Trump Cuts Labor Mediators From 143 to Four*, BLOOMBERG LAW (Apr. 8, 2025, 5:05 AM), <https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/X8RC6USO000000>. On April 4, 2025, 21 State Attorneys General filed suit against the Trump Administration alleging that the actions taken against FMCS and other agencies pursuant to EO 14238 violated constitutional limits on presidential authority and the Administrative Procedure Act. A district court temporarily blocked the government's action on May 6, 2025; however, FMCS employees remain on administrative leave and the agency has started a Reduction in Force plan to terminate all of those currently on administrative leave. *See* State of Rhode Island, No. 1:24-cv-00128 (D.R.I. May 6, 2025).

vii St. Antoine, Theodore J. "Labor and Employment Arbitration Today: Mid-Life Crisis or New Golden Age?" OHIO ST. J. DISP. RESOL. 32, no. 1 (2017) (reciting common complaints by practitioners from both management and union-side law firms with regard to labor arbitration).

viii *Id.*

ix 29 C.F.R. § 1404.14.

x AAA, Labor Arbitration Rules (July 1, 2013), available at <https://www.adr.org/media/izf14pme/labor-rules.pdf>.

xi *Id.*

xii 29 C.F.R. § 1404.14(a).

xiii FMCS, Forms and Applications: Arbitration, available at <https://www.fmcs.gov/resources/forms-applications/arbitration/>.

xiv AAA, Labor Arbitration Fee Schedule (Jan. 1, 2024), available at https://www.adr.org/media/dbjcw00y/labor_arbitration_fee_schedule_0.pdf. A "List Only" request provides a list of 15 names and costs \$150. AAA will issue the list within 48 hours of the joint request.

xv Deborah Rothman, ABA, *Trends in Arbitrator Compensation*, https://www.americanbar.org/content/dam/aba/publications/dispute_resolution_magazine/spring2017/3_rothman_trends_in_arbitrator.pdf (Spring 2017).