

In the Matter of Arbitration Between:)
)
)
 AIRCONDITIONING, REFRIGERATION,)
 AND MECHANICAL CONTRACTORS)
 ASSOCIATION OF SOUTHERN)
 CALIFORNIA, INC.)
)
 and)
)
 SOUTHERN CALIFORNIA PIPE TRADES)
 DISTRICT COUNCIL NO. 16)
)
)
 (2006 Service Master Agreement))
 _____)

**ARBITRATOR'S
 OPINION
 AND
 AWARD**

Impartial Arbitrator: Fredric R. Horowitz, Esq.

Appearances:

Union: Jeffrey L. Cutler, Esq.
 Wohiner Kaplon Phillips Young & Cutler

ARCA: Alan B. Carlson, Esq.
 Littler Mendelson

Hearings Held: September 30, 2006
 Ontario, CA

Submitted to Arbitrator: November 3, 2006

This interest arbitration arises under Article 26 of the Master Agreement ("Agreement") effective January 31, 2001 to August 31, 2006, between the Airconditioning, Refrigeration, and Mechanical Contractors Association of Southern California, Inc. ("ARCA") and Southern California Pipe Trades District Council No. 16 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada ("Union") [JX 1]. The parties concur the dispute over the 2006 successor agreement is properly in arbitration to be resolved pursuant to the provisions of Article 26 of the Agreement.

EXCERPTS FROM THE AGREEMENT [JX 1]

ARTICLE 26 – EFFECTIVE DATE AND TERMINATION

- 26.03. The Division and the Association, on behalf of its members, recognize the need to be competitive in the marketplace, to increase the available workforce, to secure market share, and further the overall interest of the industry. In a joint partnership effort to achieve these goals, the parties agree that should negotiations pass the August 31, 2006 date referred to above in Section 26.01, both parties will continue to work under the terms of this Agreement until such time as a settlement is reached, or one or both parties demand arbitration as provided below.
- 26.04. In the event a settlement is not reached during negotiations, the parties agree that there will be no interruption or cessation of work. Within thirty days of making an arbitration demand, an arbitration will be conducted by one of the three arbitrators listed below. At the arbitration hearing each party shall present to the arbitrator their respective final offers. There can be no change from the final bargaining position as presented during negotiations. Each party shall be entitled to present evidence and argument supporting its final offer. Issues that were mutually agreed upon during the course of negotiations will be considered resolved. Post hearing briefs must be filed within thirty days from receipt of the court reporter's transcript.
- 26.05. Within thirty days after receipt of the written briefs, the arbitrator will review the respective positions and select in its entirety the one position that best reflects the mutual goals of the parties, as described in Section 26.03 above. The arbitrator is bound by the terms of this Agreement to select one of the submitted positions in its entirety. There can be no mixing of the two proposals.

BACKGROUND

Preliminary Statement

ARCA was established in 1939 and currently represents approximately 90 member contractors in the heating, ventilating, air conditioning, and refrigeration industry ("HVACR") with respect to new construction and service in Southern California. District Council 16 and its member locals have a longstanding collective bargaining relationship with ARCA divided into five geographical regions represented by different locals. On June 12, 2006, the parties Union entered into a Memorandum of Understanding [EX 8] to establish a consolidated HVACR Service Master Agreement covering three of the five geographical areas: Los Angeles/Orange

Counties represented by Local 250; San Bernardino/Riverside Counties represented by Locals 364 and 398; and San Diego/Imperial Counties represented by Local 230. The parties further agreed there would be four job classifications: Journeyman; Apprentice; Mechanical Equipment Serviceman ("MES"), and Tradesman. Although wages were subject to different negotiated rates in each county, minimum pay rates and percentages for those classifications were fixed. In addition, the parties agreed to extend the nationally recognized HVACR training program throughout Southern California and to commit to a consolidated uniform Service Master Agreement in the five geographic regions to the fullest extent possible.

Following this historic accord, ARCA and the Union were able to sign off on most of the provisions in the new HVACR Service Master Agreement. But a final resolution on all pay, health, and pension issues proved elusive. The parties thus resorted to the final offer interest arbitration procedures contained in Article 26 of their Agreement [JX 1] to complete the process of finalizing the successor agreement. On September 14, 2006, the Union presented its Last Best & Final Proposal [UX 1]. ARCA responded with its Final Offer on September 19, 2006 [EX 1]. A hearing in arbitration was convened on September 30, 2006, at which the parties were able to call and cross-examine witnesses and present documentary evidence in support of their respective proposals. A transcript of the proceedings was prepared. Upon receipt of written closing argument, the matter was submitted to the arbitrator for decision. The parties jointly requested the opinion and award be issued no later than December 1, 2006.

The criteria to be applied by the arbitrator are detailed in Section 26.05 of the Agreement [JX 1]. The arbitrator is required to select in its entirety the one offer which best reflects the mutual goals of the parties described in Section 26.03: to recognize the need to be competitive in the marketplace; to increase the available workforce; to secure market share; and to further the overall interest of the industry. The arbitrator is not authorized to mix or otherwise combine the two proposals in any manner whatsoever. No useful purpose is served by summarizing the voluminous record of evidence and argument presented by the parties in support of their respective offers, all of which has been carefully reviewed and considered. Only the matters deemed essential for deciding which of the competing proposals shall be adopted will be discussed herein.

Union Proposal [UX 1]

The proposal from the Union dated September 14, 2006 consists of separate proposals from Locals 250, 364 and 398, and 230 and is summarized as follows:

- All locals propose a contract duration of two years.
- Local 250 proposes 5% annual pay increases to the journeyman package allocated by the Union; \$6.71 health and welfare contribution for all job classifications; and a reduction of \$.15 for training to be reallocated to pension. For pension, Local 250 proposes as follows: Journeyman – 1st year \$1.00 and 2nd year to fund \$180 credit; Apprentices – 3rd year \$.50, 4th year \$.75, and 5th year \$1.00; MES – 1st-2nd years \$.0, 3rd year \$.50, 4th year \$.75, and 5th year and thereafter \$1.00.
- Locals 364 and 398 propose a 5% increase effective March 1, 2007 (less \$.25 allocated health and welfare effective September 1, 2006) plus an additional \$.50 to health and welfare from the 5% allocation and a 5% increase effective September 1, 2007 allocated by the Union.
- Local 230 proposes to retain separately negotiated wage and benefit increases over the next two years for Building Trades Journeyman ("BJT") which ARCA also does not seek to change. For ARCA journeyman, Local 230 proposes 85% of the wage and benefit increases received by BJT. For MES, Local 230 proposes as follows: all increases in health insurance to be paid by employer; 5% annual wage increase calculated on employee's current actual rate including over scale; MES wages based on 50%-80% of Journeyman rate; increase pension contributions to \$.19 per hour; increase tradesman classification to \$.13 per hour; increase A&J contributions to \$.36 per hour.

ARCA Proposal [EX 1]

The proposal from ARCA dated September 19, 2006, and is summarized as follows:

- ARCA proposes a three year contract duration.
- ARCA proposes a 4.25% increase of the base wage and benefit package for journeyman effective July 1, 2006 in San Diego/Imperial, September 1, 2006 in Los Angeles/Orange, and March 1, 2007, in San Bernardino/Riverside. ARCA proposes a 4.25% increases of the base wage and benefit package for journeyman in all regions effective September 1, 2007 and September 1, 2008.
- ARCA proposes an incentive 1% per hour increase in wages effective September 1, 2007 should all straight-time service hours reported to the trust funds from June 2006 through May 2007 increase by 10% above those reported the preceding 12 months. Another 1% per hour incentive effective September 1, 2008 is proposed should the straight-time service hours reported to the trust funds from June 2007 through May 2008 increase by 10% above those reported the preceding 12 months.

- ARCA proposes new language in the Preamble the article describing the duties of Tradesman to conform to other agreements, as well as a joint effort to review the "Platform Agreement" to conform language and numbering in the successor agreement.
- For Los Angeles/Orange, ARCA proposes a \$.43 per Journeyman hour allocation to pension effective September 1, 2006 from the 4.25% increase to the wage and benefit package. In addition, ARCA proposes the Union and ARCA meet with a consultant to develop a cost neutral program implemented over a three year phased process wherein each classification will pay a composite health and welfare rate. ARCA further proposes blending the current Tradesman 1-5 and Partsman classifications into the MES and Tradesman classifications as provided in the Memorandum of Understanding dated June 12, 2006.
- For San Diego/Imperial, ARCA proposes to classify current Technicians as MES and that C Technicians and MEST employees be classified as Tradesman. In addition, no current employee will receive a reduction in pay or be denied an appropriate percentage increase as a result.
- For San Bernardino/Riverside, ARCA proposes that current Tradesman remain classified as Tradesman. In addition, no current employee will receive a reduction in pay or be denied an appropriate percentage increase as a result.

POSITIONS OF THE PARTIES

Union's Contentions

The Union maintains the final proposal represents its best efforts to offer, in all three geographic areas, a full and fair economic package taking into consideration current market conditions, forecasts on future market conditions, and past history of contract increases. Signatory contractors are generally experiencing excellent economic times and have stressed a continuing need to retain current employees and meet new work by expanding their workforces given long term forecasts of work expansion. Management's posturing in negotiations by suggesting the unionized segment of the industry is in decline misstates the economic realities of a strong and stable unionized service industry in Southern California.

The Union describes its last, best and final proposal seeking 5% wage increases for the next two years as modest. In Los Angeles and Orange counties, where the unionized market is the largest, the Union seeks changes in health and welfare contributions and pension contributions to maintain total fringe benefit contributions at current levels. The proposal is designed

to satisfy contractor demands that increasing wages, as opposed to increasing benefit contributions, are necessary to recruit non-union HVACR service workers into the unionized HVACR service industry.

The Union argues that Local 230's membership has not received a pay increase since July 1, 2005, and they deserve a pay and benefit increase commensurate with their skill and current market conditions. Cooperative efforts between Local 230 and San Diego contractors have grown the unionized industry, and some measure of regional terms and conditions are necessary to retain this positive partnership. The Union urges the proposals by Local 230 be seen as fair and reasonable on the merits given local market conditions.

In sum, the Union asserts its proposal better serves industry interests in the long term. The applicable criteria of being competitive, increasing the available workforce, securing market share, and furthering overall industry interest is not a directive to mimic the non-union environment and destroy union standards. Meeting these objectives requires both providing fair compensation to current members to assure retention of the most valuable asset for contractors, namely, a skilled and trained workforce by providing a wage and benefit structure that attracts new talent into the industry. Accordingly, the Union urges adoption of its last, best and final proposal in the new contract.

ARCA's Contentions

ARCA contends its proposal best addresses and meets the mutual goals of the parties. ARCA's proposed 4.25% increase will deliver a higher increase than attained by the Union in prior years while affording contractors the ability to remain competitive in the marketplace. ARCA proposes the same increases to all workers in contrast to the haphazard by the Union of differences between classification costs and geographical areas. A uniform approach to pay and benefits throughout Southern California recognizes the need for ARCA contractors to be competitive with non-member companies as well as each other in the marketplace.

ARCA maintains the Union's proposal will result in reductions or takeaways in benefits for many workers. The Union's proposal in Los Angeles and Orange counties would first take away totally, and then reduce the pension benefits of workers in the MES classification. The Union's pension proposals discriminates between job classifications and workers therein by

diverting contributions for MES and Tradesman to the Journeyman and Apprentice classifications. In contrast, ARCA's proposal does not discriminate between classifications or pit one group against another by uniformly applying to all classifications which is in the overall interest of the industry. ARCA proposes to work with the Union to achieve a composite health and welfare rate but in a reasonable phased in time period of three years with professional advice.

ARCA asserts a longer term contract brings stability to any industry. This is especially important in Southern California where member contractors seek long-term agreements with their customers. ARCA observes the Union negotiated a 2006-2011 five year extension agreement with CPMCA, so its proposal for a two year duration cannot be seen as reasonable for this successor contract. ARCA also argues its proposals concerning the four job classifications of Journeyman, Apprentice, MES, and Tradesman bring unity to the workforce of Southern California, avoid confusion over work functions, and further the goals of the June 12, 2006 Memorandum of Understanding.

ARCA claims the incentive wage proposal is the only proposal directed at increasing the size of the workforce. The proposal recognizes the need not only to increase the size of the workforce, but also to increase the number of hours worked by that workforce. Advances toward solutions of other economic problems cannot occur without such growth. There is no downside to the Union and workers whether the incentive goals are easy or difficult to attain. For these reasons and more, ARCA requests adoption of its proposal as the one which better satisfies the criteria in Section 26.03.

OPINION BY THE ARBITRATOR

This final offer interest arbitration is being conducted under procedures established by ARCA and the Union in Article 26 of the Agreement to resolve the impasse which has arisen in concluding their negotiations for a successor agreement. Their deadlock centers on pay, benefits, and duration provisions to be adopted in the new compact. The arbitrator is not being asked to ascertain the proper levels of pay and benefits for members of the bargaining unit over the life of the next contract. Rather, the parties have limited the authority of the arbitrator to determine only which of their competing final offers, in its entirety, comes closer to the standards contained in Section 26.03.

Historically, ARCA and the Union negotiated contracts covering the construction (hot) and service (cold) sides of the industry within Southern California on a regional basis. Changes in equipment and technology, however, have caused the parties to rethink their approach to collective bargaining for the successor agreement in the service industry. HVACR systems built from the ground up are being replaced by package units which require less skill to maintain and service. While the hours for Journeyman and Apprentice used in centrifugal, absorption, open screw, and ammonia systems appear to have remained steady over the years, the growth in package units has generated increased competition for ARCA contractors in Southern California from both union and non-union companies. By June 2006, the parties mutually decided that a separate collective bargaining agreement for the service side of the industry in Southern California which strengthens the classifications of MES and Tradesman was essential for ARCA member companies to remain competitive in the marketplace, secure market share, and increase the workforce in the overall interest of the industry.

On June 12, 2006, the parties reached their historic Memorandum of Understanding which created the platform to consolidate the service contract into a separate agreement, strengthen the lower paid classifications, export the JJATC training program throughout Southern California, and unify to the extent possible wages, benefits, and working conditions in the five geographical regions. The parties also agreed to terminate certain litigation and grievances which impeded their mutual efforts to address these future challenges through the collective bargaining process. Under the framework established in this momentous accord, the parties reached agreement on most of the terms and conditions to be included in the successor agreement. Despite substantial progress towards concluding their new compact, significant differences remain on pay, health, and pension. When the deadlock could not be broken, the parties triggered their interest arbitration procedures to resolve the dispute over which final offer would be included in the successor agreement.

The packages presented for selection herein represent the best vision of each party on attaining common goals of remaining competitive in the marketplace, securing market share, and increasing the workforce. The Union's offer presents an optimistic view of the future of the HVACR service industry, emphasizing the need to increase pay and retain existing levels of benefits as a means of attracting and retaining qualified workers. The Union has proposed creative means of funding existing benefit levels without in its view placing an undue burden

on the employers. On the other hand, ARCA offers more modest increases towards wages and benefits to contain costs in the face of increasing competition from union and non-union employers alike. In contrast to that of the Union, ARCA's wage rate proposal includes any cost increases for maintaining existing health and welfare benefits as well as a 1% incentive wage increase should straight time hours in the bargaining unit increase by 10%.

Viewed in context of their longstanding collective bargaining relationship, the Union's aggressive economic proposals are justified by comparisons with wage rates and increases received by other union HVACR workers in California as well as those in other building trades generally. The Union stresses the time has come to make real advances towards catching up with those other workers after years of sacrifice. In addition, the Union's desire to preserve existing levels of health insurance and pension credits is obvious. Active and retired workers who see their pay or pensions slowly eroding in relation to inflation can ill afford to absorb the dramatic increases in health insurance premiums experienced in this country in recent years. Preserving those important benefits for their members without eroding wages is a vital goal for the Union in these negotiations.

Yet ARCA's more conservative approach is equally justified by different considerations. Unlike heavily unionized areas of Northern California, only 15% of the HVACR service industry in Southern California is union. ARCA emphasizes the need to contain costs in this highly competitive marketplace is critical for preserving and growing the service industry for member companies in Southern California. ARCA also seeks to level competition among member companies by reducing regional differences in the cost of wages and benefits. ARCA views a three year duration essential for greater cost certainty so that member companies may bid for jobs more aggressively. In addition, ARCA cites its wage incentive initiative as necessary to encourage the Union to work jointly with ARCA to expand the service industry in Southern California.

On the other hand, each package contains provisions which would have been amended or blended had the parties continued their negotiations to conclusion. For example, ARCA's offer retains the current imbalance in benefit contributions for lower paid classifications to the detriment of Journeyman. ARCA's open ended proposal to develop a three year plan to phase in a composite health and welfare rate fails to contain any concrete parameters. This provision will undoubtedly invite conflict over economic issues during the term of the successor

agreement which should have been avoided. Moreover, ARCA's health and welfare proposals afford workers little protection from any significant increases in health plan premiums which may be incurred over the next three years.

The Union's offer is also beset with shortcomings. Although historical differences in pay and benefits among regions in Southern California cannot be bridged in one agreement, the Union's proposal does little to unify the rates or reduce competition among ARCA member companies across geographical boundaries. Moreover, the overall rate of wage and benefit increases proposed by the Union for this contract is significantly higher than achieved by this bargaining unit for the past 10 years. The Union's offer also shifts funding of pension credits for Journeyman and Apprentice away from those for MES and Tradesman classifications as well as the JJATC which will be rapidly expanding throughout Southern California during the term of the new agreement.

After weighing the strengths and weaknesses of the respective proposals, it is found on balance the final offer by ARCA comes closer to advancing the standards and criteria in Section 26.03 and the principles set forth in the historic accord of June 12, 2006 than that of the Union. As a whole, ARCA's wage and benefit proposals move the parties closer to a more unified cost structure for labor throughout Southern California than those advanced by the locals for the Union. A three year duration is more in accord with historical patterns and will provide superior cost certainty for member companies to compete for business against other union and non-union competitors. ARCA's package is also superior in strengthening the MES and Tradesman classifications as a necessary means to increase the available workforce, to secure market share, and further the overall interest of the industry.

Adoption herein of ARCA's proposal is not a finding the members of this bargaining unit are not deserving of the raises proposed by the Union, a blanket rejection of the Union's creative approach to funding pension credits, nor an endorsement of unequal costs for health benefits among the various job classifications. Although final offer interest arbitration had the benign effect of forcing both parties to make their packages more reasonable, the "all or nothing" feature of this process precluded incorporation of the positive aspects of the losing offer or exclusion of the weaker provisions in the prevailing package. Rather, responsibility for making those adjustments and enhancements has been retained by the parties for the crucible of collective bargaining.

No matter which set of proposals had been adopted, further discussions are necessary to implement fully all of the terms and conditions in new compact. This is as it should be. As partners to a longstanding collective bargaining relationship in a dynamic industry, ARCA and the Union have always confronted those challenges jointly and resolved any disagreements in a constructive fashion. While the successor agreement concluded here brings the parties closer to achieving the ambitious goals established in their Memorandum of Understanding dated June 12, 2006, more progress and refinement needs to be accomplished. It is anticipated the parties will continue to seek common solutions to the difficult and complex pay, health, and pension issues contested herein in the weeks, months and years ahead for the benefit of all concerned.

AWARD

ARCA's Final Offer dated September 19, 2006 is hereby adopted for inclusion in the successor agreement.

DATED: November 30, 2006
Santa Monica, California



FREDRIC R. HOROWITZ, Arbitrator