



April 12, 2012

To: All FCAI and NiPDi Contractor Members

PDC 30 / PDC 14 Out-of-Area Issues: Facts to Help Contractors

FCAI has undertaken an extensive review of issues that have come to our attention regarding the mobility of IUPAT members, staffing of in and out of area jobs and out of area contractors. This review of issues included consideration of communications by PDC 14, FCAC, IUPAT General President James Williams, and other sources. We also engaged our expert Labor Attorney, Michael Boldt, of Ice Miller LLP, who conducted a review of the IUPAT Constitution and the collective bargaining agreements between the FCAC and PDC 14, and between FCAI and PDC 30, among other sources. As a result of this review, we generated a list of related questions and concerns and issues raised by our members.

On March 22, 2012, FCAI participated in a conference call meeting between representatives of FCAI, the Finishing Contractors Association of Chicago (FCAC), Painters District Council 30 (PDC 30), Painters District Council 14 (PDC 14), and the International Union of Painters and Allied Trades (IUPAT). The purpose of the meeting was to clarify agreements between PDC 30 and PDC 14 concerning work performed in each District Councils' respective jurisdictions and to address questions and concerns raised by several sources.

It was clear that, prior to the conference call, significant progress had been made among the two District Councils to resolve several issues/concerns. We were also pleased to resolve/clarify our own questions and concerns and those of our members. It is our hope and intent that this spirit of cooperation continues among all parties. Please review the conclusions below.

Meeting Conclusions

1. For the purposes of understanding the agreements reached between them, both District Councils agree that, if your principal place of business is located in PDC 30's jurisdiction, you are a "PDC 30 contractor"; if your principal place of business is located in PDC 14's jurisdiction, you are a "PDC 14 contractor."
2. PDC 30 members working in PDC 14's jurisdiction for a PDC 14 contractor will not be asked to take a clearance card, be removed from the job, be placed on charges, or have any other action taken against them. However, **Union members must "check-in"** (see item #7 below). A majority of employees working on projects in PDC 14's jurisdiction should be PDC 14 members. Both District Councils agree that, in such cases, contractors should follow the "50/50 rule."

3. According to the 50/50 rule, the first person (employee) on the job can be any of your “regular employees” *regardless of which District Council that employee belongs to*. The second person on the job, if needed, must belong to the District Council where work is performed; the third person may be your regular employees *regardless of which District Council that employee belongs to*; and so on, alternating between one of your regular employees and a person who belongs to the District Council where the work is being performed. If you have run out of regular employees, you should hire members belonging to the District Council where the work is being performed.
4. When doing out of area work, if your job is fully staffed with an odd number of workers, the District Council where the work is being performed may not force an additional employee on the job for the sole purpose of satisfying the 50/50 ratio.
5. Both District Councils agree that, when you travel outside your home area, you should follow the 50/50 rule, as outlined above.
6. Both District Councils agree that, when work slows down on a project that employs a mixed crew of PDC 14 and PDC 30 members, out-of-area members will be the first to leave the job.
7. Both District Councils agree that their members have certain obligations when they leave their home District Council to work in an away jurisdiction, but these are their obligations, not the contractors. Out of area members **must report, or “check in,”** to the District Council where the work is being performed, providing the job location and dates they will be working (this may be done by phone; PDC 30 members may also check in through the PDC 30 website). They should also sign a dues authorization form so their dues are paid to the District Council where the work is being performed. It is the Union’s responsibility to deliver/obtain the signed card from the member.
8. On this matter, it was clarified that the term “clearing in,” or “clear in,” as sometimes used, is intended to mean “checking in,” or reporting the intention to work in another District Council’s jurisdiction, NOT obtaining a clearance card or joining the District Council where the work is being performed.
9. Both District Councils agree that failure on your employees’ part to do the above things can be corrected without interruption of the work, and without nullifying any agreements between the District Councils.
10. In terms of employing apprentices, both District Councils agree that, you may employ your “existing” apprentices when you travel outside your home area while performing out-of-area work, provided you comply with the journeyman-to-apprentice ratio used by the District Council where the work is being performed and the 50/50 rule (that is, each apprentice will count as one employee/member in determining your compliance with the 50/50 rule).
11. While you may employ any existing apprentices in the away jurisdiction under the conditions outlined above, both District Councils agree that any “new” apprentices needed for a job must come from the District Council where the work is being performed. PDC 14 agreed that these “new” apprentices can be considered “borrowed” for that particular job and not permanent employees.

12. Union members performing work outside their home Council shall be paid the higher of the two wage and fringe total benefit packages. All fringe benefits shall be contributed directly to the member's home fringe funds. Any differential shall be added to the member's wages or placed into the members MRA or Retirement Savings Plan. All dues check-off will be paid to the District Council where the work is being performed.
13. When performing work under Project Labor Agreements (or PLAs), outside your home council, these projects are no different than what is considered above in terms of following the 50/50 rule, if the PLA allows, except that both District Councils agree that, for PLAs in both jurisdictions, the first person on the job should be from the District Council where the work is being performed; subsequent staffing should ensure that the majority of employees on a project are from the District Council where the work is being performed.
14. When a contractor is approved to use the PDC 14 Residential Rate, PDC 14 agrees that you may staff such work with PDC 30 members, provided you comply with the 50/50 rule. Note: neither PDC 30 or PDC 14 can lower the rate paid to the member of another District Council; each can only negotiate the rates paid to their members within their jurisdiction. PDC 14 permits employers to petition to use a uniform "residential rate" in some cases – PDC 14 clarified that, once a permit is obtained, a contractor may use that rate for that particular job even after the term of the rate expires; PDC 30 permits contractors to negotiate a lower rate through an addendum to the collective bargaining agreement on a project by project basis.

The meeting involved additional subjects of concern for FCAI contractors, but not necessarily related to resolving differences between the two District Councils. FCAI shared with both District Councils additional questions regarding the signing of both PDC 30's and PDC 14's collective bargaining agreements. And, in response to concerns about the policy of PDC 30's Health & Welfare Fund concerning the expiration of eligibility for a PDC 30 member who obtains a clearance card to become a member of a District Council located within 150 miles of PDC 30, PDC 30 has indicated their intention to propose modifications to the rule.

The key to working effectively and hassle free, of course, is to make sure you are following all rules of your own area and the area you are working in. Our union partners should continue to strive to make it easier for contractors to do business. By publishing the above items, it is the intent of FCAI to keep our members informed with the facts to try and run your businesses more effectively.

You are welcome to contact the FCAI directly with any questions.