

DAVIS GRIMM PAYNE & MARRA

Attorneys at Law

701 FIFTH AVENUE, SUITE 4040
SEATTLE, WA 98104
(206) 447-0182 (Phone)
(206) 622-9927 (Fax)
www.dgplaw.com

JOSEPH L. DAVIS (Retired)
WILLIAM T. GRIMM
JOHN M. PAYNE
JOSEPH G. MARRA
EILEEN M. LAWRENCE (Of Counsel)

PATRICK S. PEARCE
SELENA C. SMITH
CHRISTOPHER L. HILGENFELD
AMY C. PLENEFISCH (Of Counsel)

April 7, 2011

Mr. Bruce Chattin
WA Aggregate & Concrete Assoc.
22223 7th Ave. S
Des Moines, WA 98198

Re: Union Contract Negotiations

Dear Bruce:

Enclosed is an Article I recently wrote regarding Labor Negotiations for 2011.
Feel free to distribute it or publish it in your monthly Newsletter if you wish.

Sincerely,



John M. Payne

JMP:tac
Enclosure

FOR UNION CONTRACT NEGOTIATIONS

7 Changes for Management

To Negotiate Into Your Union Contract

In 2011

What are the 7 most important changes Management should negotiate into your 2011 union contract?

1. **Benefits:** There are a wide variety of union benefit plans and company plans to choose from. You can reduce your benefit costs. Do your research. Future Maintenance of Benefits increases should be funded at 6% or less. For example, there is no reason for you to agree to pay 50% of all benefit cost increases.
2. **Discipline & Discharge:** Does your contract state that warning letters are only valid for 9 months? If so, why? Why should an employee be permitted to have an accident in January and another one in October and not be fired because 10 months have lapsed? Warning letters and past discipline should remain in the file permanently.

Be careful with drug and alcohol language in the “Discipline” section of your union contract. “Under the Influence” should be defined as “failing or refusing a drug or alcohol test.” There is no reason to litigate these definitions before an arbitrator.

Does your labor agreement have a limit on backpay (e.g., maximum backpay is 60 calendar days counting back from the arbitrator’s award)? The contract should have a limit on your backpay exposure.

3. **Pension:** Most Taft-Hartley (union) pension plans have withdrawal liability. Many pension trusts are imposing surcharges on employers. It is always wise to pass on the cost of surcharges to employees. There is no reason for employers to fund a surcharge cost which they did not create.

4. **Management Rights:** A strong Management Rights clause is critical to the strength of a union contract. Here is a recommended example:

The Company shall have the exclusive right to manage its business; to control, direct and supervise all operations and work to be performed; to direct all working forces, including the right to select and hire, classify, promote, schedule work, judge the competency of, layoff and recall employees or to discipline or discharge employees; to control and regulate the use of all equipment, materials, tools and other property of the Company; to maintain efficiency among its employees; to promulgate and enforce rules, regulations and personnel policies and procedures; to extend, limit, contract out, or curtail the whole or any part of the operation. Except as otherwise specifically provided in this Agreement, the exercise of any of the above rights or functions shall not be subject to the grievance or arbitration provisions of this Agreement.

5. **No Strike Clause:** Why should your employees have the legal right to honor someone else's picket line? They shouldn't. Sympathy strikes can cost you a lot of money. Your contract is negotiated. You and your employees should not get dragged into another union's battle. Here is some recommended "No Strike" language:

The Union and all bargaining unit employees shall not engage in any strike, sympathy strike, or any form of economic action, whatsoever. Any such strike, sympathy strike, or economic action is strictly prohibited. If an employee engages in such action, it shall result in termination; and only the question of whether or not the employee did, in fact, engage in such action shall be subject to the grievance or arbitration procedures.

6. **Wage Progression:** Your labor agreement should have a 24 to 36 month wage progression for new hires. For example, a new hire can be started at 70% of the full wage scale and be increased 5% every 4 months for 3 years until he reaches 100% of the full scale. This saves you in labor costs for every new hire.
7. **Seniority:** Seniority language has never been more important than in 2011. New hires should have to serve a probationary period of at least 1,000 working hours before they acquire seniority. Layoffs should take into account comparative skills, abilities, qualifications, work records, and disciplinary records before seniority is used as the tie breaker. This way, you keep your best employees in a weak economy, when you need them most.

NOTE: John Payne of Davis Grimm Payne & Marra practices exclusively in this area of labor and employment law. Mr. Payne has been representing employers in the Northwest for 30 years.