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How the unions impact lease negotiations between landlord and tenant, and how to avoid disputes

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It is not uncommon to see leases containing provisions, either directly in the lease or within the attached rules and regulations, that require the tenant to refrain from taking any action which violates landlord's labor contracts or which would cause work stoppages, picketing, labor disruptions or other disputes at a property. While a majority of leases run their natural course without this provision ever coming into question, the relevance of these provisions should not be underestimated. The recent mayoral election in Boston may prove to be of significant benefit to those supportive of unions and, as a result, it would be reasonable to expect to see more union activity at leased properties within Boston and surrounding communities. Therefore, having a better understanding of the impact of union provisions in leases is vital for both landlords and tenants.

Before even signing a lease, the parties should clearly state whether or not work is required to be performed by union laborers. In order to calculate allowances for fit-out or to allocate responsibility of fit-out, between landlord and tenant, the parties have to have a good understanding of construction costs. These costs can vary greatly depending upon whether or not union labor is required and since an amortized portion of construction costs are generally reflected in rent calculations, it is important to get these figures correct during negotiations.

While initial fit-out will most likely be the most significant cost element hinging on the use of union or non-union labor, throughout the term of the lease the parties may need to continue to address union related issues. The lease will allocate certain repair responsibilities to the landlord, tenant or both parties. Depending upon the lease terms, those costs will be borne by one of the parties (and may or may not be passed on to the tenant). Either way, the parties need to be cognizant of how the costs can vary between union and non-union laborers. Over time circumstances can change, which may result in a "non-union" property becoming a "union" property. One common example would be a sale of the property to a landlord who owns other "union" properties. For purposes of preserving harmony, you can expect to see the new landlord, especially one who has the right to consent to tenant work, condition that consent going forward upon tenant's use of union labor. Does your lease require landlord to not unreasonably withhold consent? Would the requirement to use union laborers be unreasonable?

Under this same scenario, consider what will happen to CAM charges when a landlord transitions to union laborers. The tenants generally are responsible for a good portion of the repairs (either directly or indirectly through CAM charges). If the landlord introduces union labor onto the property, CAM charges may increase significantly and, at the same time, the next time the tenant calls one of its own vendors in to complete repairs, the tenant may be faced with the threat of picketing and/or work stoppage unless they switch over to union vendors as well.

Aside from cost-related issues, parties should also consider the impact of picketing and/or work

stoppages. While some landlords may not object to labor disruptions, inevitably, there will be tenants within the building that will, and as a result, more often than not, landlords will attempt to use rules and regulations to place the burden of ending labor disruptions upon the tenant that caused the labor disruption.

At the end of the day, regardless of whether or not you support the concept of union labor, to avoid disputes between landlord and tenant, your lease ought to address the following issues:

- * Will landlord use union labor for fit-out;
- * Will tenant be required to use union labor for fit out;
- * Does landlord currently use union labor for any CAM related services;
- * Can landlord use union labor for any CAM related services and pass the costs along in CAM charges;
- * Can landlord require tenant to use union labor for tenant's own repairs; and
- * Does the lease require tenant to get landlord's consent to make repairs and can the landlord unreasonably withhold consent to the use of non-union labor.

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