



# Local 1277

# News

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1744 North Main Street • Los Angeles, CA 90031 • (323) 222-1277

Website: [www.atu1277.com](http://www.atu1277.com)

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## Lives and Careers are at Stake

### Think Before You Drink!

By Art Aguilar - President, Local 1277

During the holiday season—and throughout the year—you and your families probably attend many parties and other social get-togethers. Enjoy the festivities and the company! Have a great time, *but remember*: There may be consequences—*serious, life-changing consequences*—if you celebrate too much.

Or, to put it as bluntly as possible: *If you drink too much and lose control, you may well be risking everything of value—your career, your families' well-being and security, and even your lives!*

See the title of this article? *Think before you drink!* It is worded that way because—to be as honest and concerned as I can be—most people don't do a lot of thinking after they've been drinking and, besides, it's likely that it will be too late to help, anyway.

California, along with many other states and cities, always needs new revenue sources. Therefore, among other reasons, state and local law enforcement set up an increasing number of sobriety check points along many streets and highways. You *know* what inevitably comes next: more and more drivers are being tested—and *arrested*—for driving under the influence. More and more drivers are involved in fatal and non-fatal crashes.

#### Please do not become a statistic

Due to the nature of our work, most ATU Local 1277 members are rightly and honorably considered “safety-sensitive employees”. *Your work directly affects public safety.* With this in mind, never forget: **Your driver's license is a privilege, not a right.** Your license is, however, clearly a *professional necessity* for our Coach Operators and for our members in many other classifications.

**Please do not drive anywhere, or come to work under the influence!**

You may be randomly tested at work, or you may well be pulled over at a sobriety check point. At your worksite, a number of factors come into play:

- Under the influence, you are hampering both your judgment and reaction time to a possible emergency.
- This, in turn, may cost a co-worker, a union brother or sister, injury or even his or her life.
- While driving to and from work—or to and from a holiday celebration—you may be involved in a serious or even fatal collision, one which may drastically affect loved ones.

Is this a risk worth taking? *Of course not!* Enjoy your parties and travel to and from work, but always—always—**think before you drink!**

### Consequences of Drinking and Driving

Before you make the terrible mistake of drinking and driving, think of the consequence.

*If you are convicted of Driving Under the Influence (DUI) of alcohol or drugs—while driving a commercial vehicle (testing at 0.04% or higher), or a personal vehicle—you will, for a first offense, lose your Class “A” license for one year.*

*If this is your second conviction within 10 years—while driving a commercial or non-commercial vehicle—your driving license will be revoked for life.*

*Once again, I remind you in the strongest-possible way: Your California Driver's License is a privilege, not a right!*

**Think before you drink!** At any time, the risk you are taking at work or on the road will affect you and your family forever. You cannot undo the past. The loss of a loved one, co-worker or a completely blameless person on the road who has not been drinking or even driving will haunt you for the rest of your life.

### If You Need It, Help is Available

If you fear you may have an alcohol or substance-abuse problem, help is available. ***Do not wait until you are involved in a life-changing accident before seeking assistance!*** Through your Union, the Employee Assistance Program (EAP) is available for you to use. Do not hesitate to take advantage of this excellent resource. If you have any questions about EAP, or wonder if it can help you, talk to your Shop Steward or a Union officer. Life is too short to fool around with drinking and driving!

A final reminder: A number of Local 1277 brothers and sisters—too many, actually—have been terminated for alcohol or drug abuse. ***Never forget this: Management at all of our properties is not fooling around or making idle threats. You can lose your job, your career, your future and that of your family's! Please get help if you need it. Only you can save your job and everything that flows from it.***

### On a Happier, but Realistic Note

We are heading into an understandably subdued holiday season. Still, my family and I, along with your Executive Board most warmly wish every Local 1277 active and retired member and your families and friends enjoyable and safe, *healthy* holidays. Please have a responsibly safe time! Wear masks, socially distance yourselves, and hold down your parties to a safe level of attendees. We all are in this pandemic together, and the *very last thing I want to hear about is any Local 1277 brother or sister, or family member, coming down with the coronavirus!*

*Continued to page 2...*

## Continued from page 1...

But even as we prepare to celebrate the season, we must never forget the economically challenged people and families who live among us throughout California. Too many people live in shelters or, worse, on the streets. Too many children will miss the joy of opening presents and, far worse, will be hungry and cold during December.

*Please try to help those who are much less fortunate than we who have homes, food, careers, healthcare, savings, and pensions. There are many ways you can do this, as you know. Please pick a way and do so.*

And maybe—just maybe—we have the beginning of hope for a better, more caring government in Washington, D.C. Maybe—just maybe—a compassionate, pro-working family President will be able to get a balky, fractured Congress to pass desperately needed legislation on healthcare, infrastructure improvement, coronavirus control, climate change, civil and human rights, and *union rights and jobsite safety*.

Let's hope. That's what we need and must hold on to: Hope. What a wonderful holiday gift it would be: *A functioning government! Be safe, healthy and content this season, brothers and sisters!*

## Notes from the Front Lines

*"Too little, too late."* ATU International President John Costa angrily responded to the CDC's weak recommendation—*not requirement*—that all passengers and workers on buses, trains, airplanes and other public transportation wear masks to control the continuing spread of coronavirus. "This is too little, too late, and downright shameful," he said, referring to the federal Center for Disease Control's "non-response" to the on-going and spreading pandemic.

Our International has lost 94 members, with thousands more infected or exposed to the virus while serving the public on the front lines across the United States and Canada. Further, IP Costa criticized CDC's suggestion that transit operators enforce passengers' wearing of masks. "Not only is the CDC threatening the health of riders and workers with this inadequate recommendation, it jeopardizes the safety of operators by asking them to kick people off who aren't wearing masks. This can only lead to potentially dangerous confrontations."

*Which we have seen too many of!*

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*The ATU's influence within the Democratic Party continues to grow.* During last summer's Democratic National Convention, ATU International President John Costa served as a member of the Party's Front Line Workers Panel.

The panel thoroughly discussed and commended ATU's heroes on the front lines of the pandemic. President Costa laid out the case for supporting the Biden-Harris ticket in November: "Trump's mishandling of the coronavirus crisis, his lack of leadership and lack of compassion, has put 200,000 of my members at risk. I have 83 members who passed away and nearly 1,000 infected. They [the feds] gave us no masks, no PPE. I am very proud to say that the ATU was of the very first international unions to endorse Joe Biden."

*And now, with the very satisfying result of Joe Biden becoming our next President, IP Costa and the ATU will be voices that will be heard in administration discussions on issues that are critical to us: The fight against coronavirus, workplace safety, improved healthcare, pro-union oversight at the Department of Labor and OSHA, and rebuilding the national infrastructure—including expanded federal aid to mass transit!*

Our voice is already being heard! President-elect Biden, a strong friend of unions and working families, has designated the ATU and other unions to be key members of his transition team, focusing especially on the Departments of Labor and Transportation. *In fact, the President-elect has committed to making his administration perhaps "the most pro-union one ever." President-elect Biden said, "I have made it clear to the corporate leaders that I want you to know that I am a union guy. Unions will have increased power."* The new president will focus on public-sector unions. His transition teams include union leaders, starting with ATU's John Costa. *No major employers are on the transition teams.*

Said ATU IP Costa: *"The Department of Labor and OSHA are two of the most important for the ATU and our members, and we are glad that the labor movement is taking part in helping to prepare for the future." Labor's input on these two transition teams will focus on developing policies and regulations, and evaluating personnel for key departmental positions.*

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*Transit workers could lose their jobs even as they risk their lives to keep serving the public.* With (as of right now) no new coronavirus/jobs stimulus bill in sight, transit agencies, facing steep revenue losses, may have to lay off even *more* workers. ATU International President John Costa that more than 18,000 members have already been laid off. "We tried to keep the economy going and save lives by telling our members it's the right thing to keep buses going and transporting hospital workers and front-line workers to their jobs. We are out there risking our lives every day to move these buses and we get laid off?"

*In better news*, Brother Costa praised the inclusion of \$32 billion for mass-transit systems in the new Heroes Act bill which has cleared the *Democratically* controlled House of Representatives. He said this funding, if approved by the Republican-run Senate and signed by the President, would save many jobs. However, IP Costa said that additional funding would be needed for the hard-hit motor-coach industry.

**Bay Area ATU locals denounce lack of safety precautions.** Citing the deaths of five members from Bay Area locals, ATU International Vice President **James Lindsay** blasted the Metropolitan Transportation Commission's proposed safety program, saying it does not protect transit workers or riders on public transit. "This is outrageous. We will fight every transit agency that decides to implement this plan, and under our contract we have the right to shut down service because of safety."

Operators in ATU Local 265 (San Jose) must disrobe outside their homes at the end of the working day to minimize the risk to their families of the coronavirus. All the Bay Area local unions continue to demand more and better PPE, facemasks to give those riders who *still* refuse to wear one as they board, hazard pay and more comprehensive and frequent coronavirus testing.

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**ATU Local 1756 (Arcadia, CA) files an OSHA complaint against Foothill Transit contractor Transdev.** Our sister union is rightfully upset over discipline against employees who refuse to drive while fatigued.

It's pretty simple. These dedicated, front-line Operators have been working *six-day* weeks since the outbreak of the pandemic. For a lot of pretty-obvious reasons, they have become exhausted. *No one in their right mind wants an Operator falling asleep while he/she is driving a multi-ton vehicle!* **It is unlawful for an employer to retaliate against an employee for refusing to violate the Fatigued Driver Rule (49 CFR 392.3)** Local 1756 is absolutely right in wanting to protect the safety of its members and the riding public! And our sister union will not stand for any illegal discipline!

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## Lessons learned

*By Mauro Varela - Treasurer, Local 1277*

This past election was "highlighted" by an overwhelming bombardment of scare tactics and misinformation, all designed to confuse and somehow dissuade people from voting. But as we all can see, the election featured record numbers of people who registered to vote. However you may have voted—although I hope you voted for union-backed Democrats—you *all* voted! Whether through mail or in person, people overwhelmingly made sure their voice was heard. Putting the Presidential election aside for the moment, it was very inspiring to see that the we Americans believe in the democratic process and *believe* that our vote matters.

While the national races (Presidential and Congressional) were interesting and important, the *local* races here at home were very closely watched by your Executive Board. We were involved in several key races of great importance. As you know, having allies in politics is how we can get things done. *Never forget that regardless of the agency you work for, everything has to get approved by a board.*

That means vital concerns for your careers like contracts that get negotiated, working conditions or rules that have to change because of a pandemic, and when to start hiring again are just some examples of things that we have dealt with over the last few months. I am sure you understand the importance of having people on these boards who not only listen to an agency's management, *but are told and understand our concerns and goals, too.*

## Electing Political Allies

So, what did election results do for us? Well, thanks to you, we were able to keep or gain a few critical allies, especially in under-represented Riverside County. We endorsed **Denise Delgado** for Coachella City Council, and I'm proud to report that she won overwhelmingly. We were able to keep our allies, **Russel Betts** on the Desert Hot Springs City Council, and **Lisa Middleton** and **Christy Holstege** on the Palm Springs City Council.

Lisa and Russel both sit on SunLine Transit's Board of Directors. In Moreno Valley, we were able to help keep **David Marquez** on the City Council and **Malcolm Corona** on the Perris City Council. Both David and Malcolm sit on Riverside Transit's Board of Directors. Unfortunately, we did lose a key race: **Andy Melendrez** lost his run for Mayor of Riverside. Andy currently sits on the RTA board; we will wait and see what happens with that situation.

Politicians were not the only ones on the ballot. We also had a few key propositions that we really needed to win. One in particular was more important than the others: Proposition 22. We very much wanted a win for the NO side here. I hate to say it, but we failed. Proposition 22 passed by an overwhelming margin. I'm not going to sit here and lecture anyone about how important it was to vote *no*. Instead, I want to talk about *why* we failed, and the lessons that we need to learn going forward so that we don't fall victim to the same mistakes.

## Where We Went Wrong

Complacency is defined as self-satisfaction, especially when accompanied by unawareness of actual dangers or deficiencies. *We as a labor movement fell into that trap up and down California.* Plainly put, we were complacent. We took our own brothers, sisters and families for granted. We assumed that you would follow the lead and pleading of your Executive Board and vote no. We took for granted our biggest weapon against the fists full of money the Yes on 22 campaign was pumping in. In speaking with some of you just days before the election, I realized that *our own members* had fallen victim to the constant barrage of misinformation being pumped out by the opposing Yes campaign.

Unfortunately, I spoke to those brothers and sisters a day too late, since they had already voted and sent off their ballots. I cannot and will not, hand out blame. We, as union leaders, *cannot* sit here and place blame, or lick our wounds, or make excuses because the other side had \$210 million to freely spend, compared to our measly \$10 million campaign. Money can only buy an election if we let it.

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We, as the organized labor movement, clearly communicated our position on Proposition 22. We diligently attempted to reach out to all our members in California to vote **No** on Proposition 22. Unfortunately, too many of our brothers and sisters either failed to read our newspaper or provide us with the correct contact information. We learned that our members did *not* take into account that what the independent Uber/Lyft drivers wanted was *what we already have: A voice!* Instead, we were conned by the corporate greed machine which spent \$210 million on print, radio and television ads, direct-mail campaigns, and a social media onslaught. And, to add insult to injury, too many of us never bothered to read the fine print that spelled out exactly which corporate giants were paying the freight. That knowledge could have changed a lot of votes.

This is a rude awaking, but a much-needed reminder to everyone that we cannot take anything for granted. I don't know what will ultimately come from the Proposition 22 win. I'm sure that there will be lawsuits and litigation over what applies or doesn't apply to AB 5. As always, we will keep you informed. But I have learned a very valuable lesson, one that I will not soon forget: ***We as a movement of working people, fighting for working people, cannot afford to sit idle and let complacency sink in. We have worked too hard and too long to allow it to happen again!***

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## **Your Union Rights and Protection Against Self-Incrimination**

*By Errol Frazier - Vice President, Local 1277*

As dues-paying, card-carrying public-sector union members, you have special rights that have been fought for over the years and are now at your disposal. ***Specifically, you have a right to remain silent and refuse to answer when a manager or supervisor interrogates you, and it appears that you may be charged with a criminal offense as a result of alleged misconduct.***

*Your silence can be held against you for the purpose of discipline by the company, but it cannot be held against you in any subsequent criminal proceedings.*

In *Lybarger v. City of Los Angeles* (1985), the California Supreme Court determined that whenever a manager/supervisor interrogates an employee and a) it appears that the employee may be charged with a criminal offense as a result of their misconduct, or b) the employee refuses to answer questions on the grounds that the answer may be criminally self-incriminating, the question *must* be proceeded by a “**Lybarger Admonishment**”.

The employee *must* be told that ***although he or she has the right to remain silent and not incriminate himself/herself,***

- His/her silence could be deemed insubordination, leading to administrative discipline, up to and including termination, and

- Any statement made under the compulsion of the threat of such discipline could *not* be used against him/her in any subsequent criminal proceeding.

If the employee continues to stand on his/her Fifth Amendment right to remain silent in the face of the above admonition, he/she risks disciplinary action for the refusal to answer. *If the employee agrees to answer questions after they have been given the Lybarger Admonishment, management can use his/her answer for administrative disciplinary purposes, but not criminal prosecution.*

Therefore, when a public-sector employer (MTA, RTA, SunLine and LBT) questions an employee about criminal matters, that triggers the employees' right to remain silent and not incriminate themselves. In the case of *Spielbauer v. County of Santa Clara*, the California Supreme Court reiterated that this right to be silent is *not* absolute and is subject to the public employer's need to promptly investigate allegations of misconduct. The Court held that a public employee *can* be disciplined or even terminated for refusing to answer questions if the employer states that the answers will *not* be used for the purpose of a criminal action against the employee.

Practically, this grant of “*use immunity*” (immunity granted to a witness in a criminal case that prevents the use of the witness's compelled testimony against that witness in a criminal prosecution), is not air-tight, and great caution should be used in any situation where the employee could face criminal prosecution. While prosecutors would be prohibited from using the actual interview or related notes against the employee, they could be used to impeach the employee if he or she (the employee) were to testify at trial and the testimony conflicts with his/her testimony in the interview.

Additionally, ***law enforcement can use the interview to locate independent evidence to support the employee's prosecution.*** Though this evidence is potentially subject to exclusion at trial if obtained illegally, it might be hard to prove the original source of the evidence. For these reasons, and depending on the conduct in question, even if your employers says, “*Your answers won't be used against you in a criminal action*”, the public-sector employee will need to decide whether it is better to refuse to answer and face discipline, even dismissal, or to cooperate and face criminal consequences.

Also, remember if you hear the *Miranda* warning about “You have the right to remain silent,” it is probably best to remain silent then. Once you speak to a criminal defense attorney, you may wish to make a statement, *but first find out the consequences of such a statement.*

***Always remember, before any meeting with management where you reasonably believe some sort of discipline may result, be sure to invoke your vitally important Weingarten Rights, and ask for Union representation!***