Labor Relations Bulletin
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Labor-Management Decisions: More Than Whole

NECA and the IBEW have worked to ensure a robust internal dispute resolution process designed to prevent disruptions and ensure industry efficiency through the Labor-Management Committee (LMC). The LMC plays a crucial role in this process by diligently adhering to the Collective Bargaining Agreement when resolving issues.

Straying from the bounds of the Agreement exposes both parties to litigation and weakens the enforceability of the Agreement. Therefore, the safeguarding of the integrity of this process is paramount to the continued success of the industry. This prevents a term commonly referred to as "industrial justice" or "punitive damages." The parties are only able to render a Labor-Management (LM) decision that makes the aggrieved party whole in line with the terms and conditions of the Collective Bargaining Agreement.

What does this look like?

The following is a hypothetical scenario of a grievance. An individual was performing work for a signatory employer and started arriving for work late several days in a row. After continued warnings, the employer terminated the individual for cause. A grievance was filed against the employer for wrongful termination. The grievant alleges they missed 20 hours of work due to the improper termination. During the discussions at the LMC, it was found the individual provided some excuses in advance of being tardy but sent them to someone on the crew as opposed to the Foreman or other supervisor for the employer. After further examination, it was found about half the reasons were excusable. Given the circumstances, the following motion was passed:

The LMC instructs the employer to issue a new termination slip with the separation reason as reduction in force. Further, the LMC instructs the employer to pay $350 to the JATC as a final settlement for this dispute.

It should be noted the $350 was based on calculating the hourly rate, $35, times 10 hours. The rationale of the LMC was about half the hours the grievant claimed to have missed were mostly proper, but due to discussions in the room, there was not an appetite to compensate the individual.

The NECA Chapter and the IBEW Local Union LMC reach a decision on a grievance and reduce their decision to writing, sign it, and send it to the employer and grievant.

Could the Employer challenge the decision?

Yes. The Employer could challenge this decision in court. In this hypothetical scenario, after months of depositions, discovery, and testimony the ruling from the court is to vacate the decision as it was determined the LMC overreached.

What is wrong here?

A LMC shares similar limitations to an arbitrator. Their decisions must be within the bounds of the contract and can only "make whole" unless there are provisions which allow for more. Anything above or beyond what the contract would allow could, and most likely will, be vacated if challenged in court and considered industrial justice.

That's what happened here. The LMC heard the evidence for the grievance and rendered a decision which is not calculable in the Agreement. Yes, the hourly rate is $35, and there was some logic to reduce the hours by half based on the evidence they had, but the problem arose when they directed the payment to the JATC. For this decision to "hold water," the Agreement would have to have some avenue for the LMC to direct payment to the JATC as a settlement of grievances, and in this hypothetical scenario, it does not.

What should have happened?

The mistake the LMC made was issuing a decision which was considered punitive by the court without a provision in the Agreement allowing for such damages. Punitive damages, sometimes referred to as exemplary damages or the previously mentioned industrial justice, are penalties which extend beyond compensatory damages (make-whole).

In general, NECA-IBEW Agreements do not have provisions in them which allow for punitive awards. What this means is the maximum award the LMC could have issued in this case would be the hours missed by the individual paid to the individual. The only additional remedy that may have been allowed above and beyond would be liquidated damages and interest to the fringe benefit funds if those provisions allowed for such, and the payments were considered late after the award was issued.

In this case, if the LMC were seeking some form of payment, the only avenue be to pay the individual for hours they would have worked pursuant to the Agreement. Anything more would be outside of the bounds of the contract.