

NLRB Signals Pullback on Consequential Damages Against Unions

Labor Relations Update on **September 21, 2022**

As we previously [reported](#), the National Labor Relations Board (“NLRB” or “Board”) has indicated that it is committed to considering consequential damages as a possible make-whole remedy applicable to damages both caused by an employer’s unfair labor practice (“ULP”) *and* against a union for damages caused to an employer.

A recent settlement agreement involving the United Mine Workers of America (“UMWA”) illustrated the Board’s commitment in this regard, when – in June 2022 – the NLRB estimated that the union would have to pay \$13.3 million in damages to an Alabama coal company pursuant to an agreement intended to resolve several strike-related unfair labor practice changes. Recently, however, the NLRB Regional Office indicated an intent to reduce the estimated consequential damages to below \$500,000 to settle the ULP.

Background

UMWA-represented mine workers at the employer coal company have been on strike for over a year in protest against what the workers deem to be unsatisfactory negotiations for higher wages and improved benefits. Over the course of the year-long strike, the workers have picketed outside of the employer’s Alabama coal mines and offices.

During this time, UMWA and the employer have filed a number of ULP charges against each other, including charges alleging that the UMWA has engaged in strike misconduct by placing devices like jackrocks in the roads leading into and out of the employer’s facilities, blocking the ingress and egress to the mines, threatening security guards at the employer’s facilities, and engaging in vandalism of the employer’s and replacement workers’ property at the employer’s worksite.

The UMWA, the employer, and NLRB General Counsel's Office negotiated a formal settlement agreement to resolve the strike-misconduct ULPs, which the Board approved in June 2022. As stipulated in the settlement agreement, the NLRB Regional Office later issued calculations for the damages UMWA owed to the employer and to the individuals injured by the alleged strike misconduct, totaling over \$13 million.

Part of the NLRB's calculations included consequential damages for economic losses suffered by the employer, including the costs incurred by the employer to increase security at its facilities as well as the lost revenues to the employer for the unmined coal.

Appeal to the Regional Office and Takeaways

In response to the Regional Office's multi-million dollar projection, the UMWA announced in the first week of August that it would appeal the Board's damages calculations.

On September 19, the NLRB Regional Office in Atlanta slashed the proposed settlement amount by nearly \$13 million. The Atlanta Regional Office's recalculation will, instead, require the UMWA to pay the Alabama coal company \$435,000 to settle the ULP charges.

This prosecutorial decision by the NLRB Regional Office suggests that the Board is less inclined than what was previously signaled to apply costly make-whole remedies to unions that cause damages to employers. It is unclear whether the Board may be more inclined to apply this approach to downstream economic losses that the employer has caused employees by engaging in ULPs.

The Board's next determination with respect to alleged damages caused by an employer's ULP bears watching, and as always, we will keep you apprised of the latest updates from the NLRB.

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