



MEMORANDUM

DATE : June 22, 2011

TO : Lester A. Heltzer, Executive Secretary

FROM : Stephen M. Glasser, Regional Director
Region Seven – Detroit

SUBJECT : Local 687, Michigan Regional
Council of Carpenters
(Convention & Show Services, Inc.)
Case 7-CB-15293

REGION SEVEN'S RESPONSE TO THE CHARGING PARTY'S OPPOSITION TO THE INFORMAL SETTLEMENT AGREEMENT

The Opposition submitted by Charging Party Michael Johnston to the Informal Settlement Agreement in the instant case was received in this office on June 3, 2011. Upon review, the Region believes that the Board should be informed of our position on, and methodology with respect to, an important issue raised in the Opposition.

In paragraph 46 on page 13, the Charging Party contends, without stating his basis, that one discriminatee alone could have lost as much as \$60,000-\$70,000 over the 13-month period at issue and that, even if the average loss is \$10,000, the total make whole remedy would be \$4 million. Although unstated, it appears that, in order to arrive at such large amounts, the Charging Party is considering that all of the members of the Respondent who were hired would not have been hired had there been nondiscriminatory referrals which did not take into account the extent to which a member picketed. It therefore would follow, under this line of reasoning, that a full make whole remedy would be for all the discriminatees to be paid for the entirety of work available during the February 2006 through February 2007 timeframe. The Region believes that such an assumption is very much at variance with the available evidence.

To begin with, it should be noted that the Region has been involved with the instant case for several years and is well aware that much of what occurred is not easily quantifiable and, by its very nature, is highly speculative.

It appeared to the Region there were actually about 500 picketing referrals over the course of the 13-month backpay period. This figure was arrived at after steward, apprentice, request, and non-picketing referrals were removed from the overall number, which is in excess of 1,000. Although a substantial number of the Union's voluminous records must still be scrutinized, the preliminary data obtained by the Region supports such a diminishment.

Out of 58 members who the Region has thus far identified as having been hired by the various contractors, only 19 had actually picketed. Admittedly, these figures are still only fractions of the overall numbers. Nevertheless, from an objective statistical sampling standpoint, this is compelling evidence that the number of referrals based on picketing preference was only a minority (perhaps a third or fewer) of all of those who wound up being hired. (Notably, the Charging Party is among those members who picketed at least once but still was not hired.)

In any event, the Region also determined that it appeared that the referrals averaged 24 paid hours per referral. We then proceeded to examine the 500 picketing referrals on a monthly basis.

It was observed that the period of February through May 2006 had fewer referrals each month than did the period of June 2006 through February 2007. This resulted in apportioning 135 referrals to the first four months and 365 referrals to the last nine months.

With respect to the February – May 2006 timeframe, there were potentially 3,240 hours (135 referrals times 24 hours) that could have been worked. As there was a pay and benefit rate of \$42.85 per hour in effect at that time, it was found that a total of \$138,834 (3,240 hours times \$42.85/hour) could have been paid to the 135 referrals.

With regard to the June 2006 through February 2007 timeframe, there were 8,760 hours (365 referrals times 24 hours) that could have been worked. At an increased pay and benefit rate of \$44.24 per hour, a total of \$387,542.40 (8,760 hours times \$44.24/hour) could have been paid to the 365 referrals.

Thus, cumulatively, without interest, the total would be \$526,376.40. As of February 7, 2011, when the settlement agreement was executed, there would be an

additional \$136,543.34 in interest. That would bring the total of backpay, benefits, and interest to \$662,919.74.

The Region's consideration of the amounts did not end there, however. It was noted that, for settlement purposes, it might be advisable to also consider the matter from the not unrealistic standpoint that not all of the referrals would have gone to nonpicketers but for the discrimination. As a result, the Region also computed what the amounts would be for 80 percent of the referrals.

This meant that the total number of compensated referrals would be 400. At 80 percent, the resulting backpay and benefits would be \$421,101.12, and the interest (as of February 7, 2011) would be \$109,234.68. Finally, the adjusted backpay, benefits, and interest would be \$530,335.80.

The above-noted amounts are still substantially above the \$300,000 total that was agreed-upon in the settlement. Although ordinarily the Region would not be amenable to such a monetarily diminished settlement, the circumstances of the instant case militated in favor of approving the settlement. As a result, it was determined that a \$300,000 settlement was reasonable. The Region was mindful that even success before a three-member Board panel might still bring an appeal by the Respondent to the District of Columbia Court of Appeals, which would be not only time-consuming, but no guarantee of success.

/s/ SMG
S.M.G.

cc:

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