

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 12-74

August 21, 2012

To: Regional Directors, Officers-in-Charge, Resident Officers,  
Compliance Supervisors and Compliance Officers

From: Anne Purcell, Associate General Counsel

Subject: Follow up to OM 11-61 Financial Remedies and Other Settlement  
Terms Audit OIG-AMR-63

In September, 2010, the Inspector General completed an audit of the Agency's financial remedies and other settlement terms. The Report can be reviewed at <http://www.nlr.gov/sites/default/files/documents/200/oig-amr-63-10-02.pdf>. Two of the areas reviewed by the audit involved documentation of backpay calculations and data accuracy in CATS. As a result of deficiencies found in the audit, OM 11-61 set forth steps Regions should take to ensure that both backpay calculations and information regarding remedies obtained are accurately set forth in the case file. To assist Regions in complying with these steps, the following two changes have been made in NxGen.

The first change involves the documentation of backpay calculations. As set forth in Compliance Manual Section 10560.2(D):

Region's files in meritorious cases should contain documentation clearly describing the Region's assessment of the backpay due. In rare situations, detailed computations may not be required if they are not feasible or worth the investment of time. However, even in these circumstances, a reasonable effort should be made to estimate backpay. In certain situations, computations are not necessary if the Region has concluded that the respondent is unable to pay any amount owing. Computations are also not necessary where the charging party or discriminatee expresses an unwillingness to cooperate further in Agency proceedings. In cases involving bankruptcy, however, it may be necessary for the Region to compute backpay for the purpose of filing a Proof of Claim. In the event the Region determines it is not feasible or necessary to calculate backpay, the file should clearly document this determination and set forth the reasons that such determination was made.

To ensure that the backpay assessment documentation can be easily recognized, a new document subtype of "**Remedy Calculated**" has been added to NxGen. This documentation should be uploaded in the Action where the

remedy was obtained. For example, if the remedy was obtained as a result of an adjusted withdrawal, the memorandum showing the calculations for backpay or the memorandum explaining why calculations were not completed should be uploaded in the Withdrawal Action. If the remedy was obtained as a result of an informal settlement agreement, the memorandum should be uploaded in the Settlement Action. The document should have a Document Type of **ICM** and a Document Subtype of **Remedy Calculated**. When the document is finalized, it should have a Status of Final Version and a Visibility of Side.

The second change involves the supervisor's verification that the remedy obtained in the case is accurate in NxGen. As set forth in OM 11-61, prior to approving an adjusted withdrawal/dismissal or informal settlement, a supervisor should verify that the information in NxGen, including but not limited to reinstatement and the amount of backpay due and paid, matches the information in the file. Similarly, the supervisor should also verify that waivers of reinstatement and appropriate approvals for settlements less than 80% are contained in the file. To assist with this verification process, a **"Remedy Calculations Reviewed"** checkbox has been added to the bottom left hand corner of the Backpay and EE Reinstatement screen (see screen shot below).

The screenshot shows the NxGen interface for the 'Backpay and EE Reinstatement' screen. The top navigation bar includes tabs for Cases, Approvals, Tasks, Due Dates, EOTs, Suspensions, Action Team, Documents, Sub-Actions, Action Notes, Inquiry, Special Project, Issues, Remedies, Election Tally, Election Schedule, Hearing, Allegations, Baroaining Units, and Capions. The main content area displays a table with columns for Remedy, Action Name, Action Type, and Remedy Calculations Reviewed. The table shows one row with 'Backpay and EE Reinstatement' as the Remedy, 'Settlement' as the Action Name, and 'Formal' as the Action Type. Below the table, there is a form with various fields and checkboxes. The 'Remedy Calculations Reviewed' checkbox is circled in black.

| Remedy                       | Action Name | Action Type | Remedy Calculations Reviewed |
|------------------------------|-------------|-------------|------------------------------|
| Backpay and EE Reinstatement | Settlement  | Formal      | <input type="checkbox"/>     |

Remedy: Backpay and EE Reinstatement    Final Payment Date:    Amount Paid by Union: \$0.00    No. Waiving Reinstatement before Offer: 0

No. to be Made Whole: 0    100% Backpay Calculated: \$0.00    No. to be Reinstated: 0    No. Declining Reinstatement after Offer: 0

No. Receiving: 0    Amount Paid by Company: \$0.00    0    No. Placed on Preferential List: 0

Remedy Calculations Reviewed:

In order for the checkbox to be marked, the NxGen user must be part of the Action Team (the Action Role is irrelevant) and the user's primary position must be a Manager, Supervisor, Office Manager, Assistant Office Manager or Secretary to the Regional Director.

Before the Director approves the settlement, s/he should verify that the supervisor has approved the settlement, i.e. checked the "Remedy Calculations Reviewed" box in NxGen, thus verifying that the information relating to the settlement is accurate and reflected in the file. A copy of the checkbox can be reviewed (not marked) from the Remedies tab at the Case level (see screenshot below).

|                                |                                                    |                              |
|--------------------------------|----------------------------------------------------|------------------------------|
| Case Number: 20-CA-062163      | Case Name: *NxGen Shake Out Test Release 4.2 Marge | Dispute/Unit City: Bedford   |
| Status: * Open                 | Charging Party/Petitioner: EMMA SULLYOK            | Field Agent: MBETTENC        |
| IA Category: 3                 | Date Filed: 8/6/2011                               | Field Supervisor: NMITCHEL   |
| Barg Status: Existing Contract | Filed Date + 120: 12/04/2011                       | Filed Date + 365: 08/05/2012 |
|                                |                                                    | Dispute/Unit State: OH       |
|                                |                                                    | Team: MBETTENC               |
|                                |                                                    | Closed Reason:               |
|                                |                                                    | Date Closed:                 |

  

|           |                    |              |         |           |         |              |             |                  |                 |                |               |
|-----------|--------------------|--------------|---------|-----------|---------|--------------|-------------|------------------|-----------------|----------------|---------------|
| Case Team | Participants Admin | Participants | Summary | Case File | Actions | Target Dates | Allegations | Bargaining Units | <b>Remedies</b> | Election Tally | Related Cases |
|-----------|--------------------|--------------|---------|-----------|---------|--------------|-------------|------------------|-----------------|----------------|---------------|

  

| Remedy                         | Action Name              | Action Type              | Remedy Calculations Reviewed |
|--------------------------------|--------------------------|--------------------------|------------------------------|
| > Backpay and EE Reinstatement | Compliance Investigation | Compliance Investigation | Y                            |

In addition to the above changes, pursuant to numerous requests, an **“Expungement of Discipline/Discharge”** Remedy has been added to the Affirmative Actions Remedy Task.

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Post Notice:<br>Post Notice: Company Posted Date: <input type="text"/><br>Company Posting Type: <input type="text"/><br>Post Notice: Union Posted Date: <input type="text"/><br>Union Posting Type: <input type="text"/><br><input type="checkbox"/> Withdraw Assistance from Union:<br><input type="checkbox"/> Letter or Notice Withdrawing Assistance:<br><input type="checkbox"/> Disestablish Union:<br><input type="checkbox"/> Letter or Notice Disestablishing:<br><input type="checkbox"/> Information Provided:<br><input type="checkbox"/> <b>Expungement of Discipline/Discharge:</b> | <input type="checkbox"/> End Picketing:<br>End Picketing: Date Ended: <input type="text"/><br>End Picketing: No. of Employees Returning from Work: 0<br><input type="checkbox"/> End Work Stoppage:<br>End Work Stoppage: Date Ended: <input type="text"/><br>End Work Stoppage: No. of Employees Returning to Work: 0<br><input type="checkbox"/> Bargain:<br>Bargain: Status of Bargaining When Case Closed: <input type="text"/><br>Other Remedies: <input type="text"/> |
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If you have any questions regarding this memorandum, please contact your AGC or Deputy, your assigned Program Analyst or the undersigned.

/s/  
A.P.

cc: NLRBU