

Grievance Handling and the Legal Limitations of Labor-Management Committees

INTRODUCTION



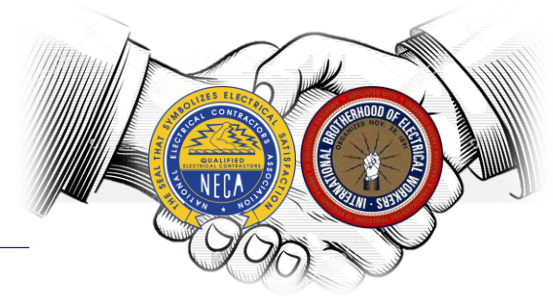
- This presentation shall address the “ABC”’s of procedures involved in grievance handling and the authority that labor-management committees may exercise in resolving those grievances.
- Recently, questions have arisen as to the authority such committees have in crafting remedies.
- It is appropriate first to examine the scope of Labor Management Committee authority and the review of the authority accorded labor-management committees by the courts.
- This presentation is not, however, a substitute for competent labor counsel who should be consulted on an as-needed basis.

Deference by the courts



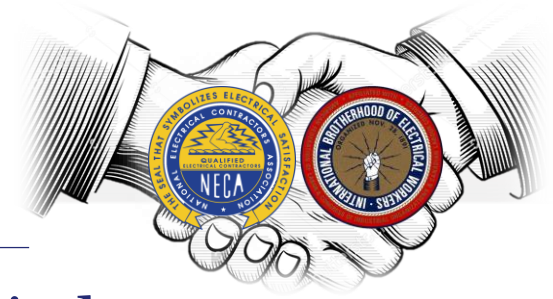
- Federal courts are authorized to review the decisions of labor arbitrations but this review is limited.
- The Supreme Court and other federal courts extend considerable deference to the decisions of arbitrators in their rulings.
- The Supreme Court addressed the issue of the arbitrator's remedial authority and a court's limited power to second-guess an arbitrator's choice of remedy.

The LMC has jurisdiction first



- *The courts have jurisdiction to enforce collective bargaining contracts; but where the contract provides grievance and arbitration procedures, those procedures must first be exhausted and courts will order the parties to resort to the private settlement mechanisms without dealing with the merits of the dispute.*

Legitimacy of awards



- Arbitrators should bring their informed judgment to reach a fair solution of an issue, especially remedies.
- There is a need is for flexibility in meeting variety of situations.
- Arbitrator is confined to interpretation and application of the collective bargaining agreement.
- Arbitrator may not dispense its own brand of industrial justice.
- Arbitrator's award is deemed legitimate if it arises from the collective bargaining agreement.

Enforcing decisions



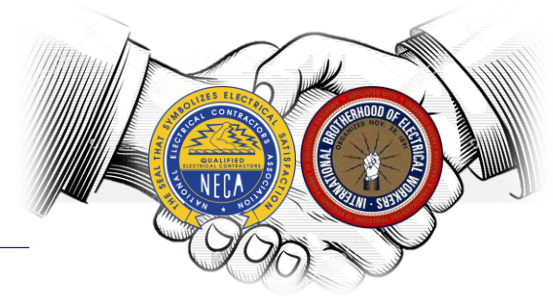
- The courts have jurisdiction to enforce collective bargaining contracts...
 - but where the contract provides grievance and arbitration procedures, those procedures must first be exhausted.
- The Courts have agreed to accept the arbitrator's view of the facts and of the meaning of the contract
- Courts thus do not sit to hear claims of factual or legal error by an arbitrator.

Adhering to the CBA



- A court should not reject an award on the ground that the LMC misread the contract because of the authorization given it by the parties.
- Grievances and arbitrations are part of the bargaining process.
- Even if the LMC errs in its decision, the interpretation may stand due to its own application of contract language

Setting aside the decision if...



- 1) The award conflicts with express terms
- 2) The award imposes requirements not expressly provided for
- 3) The award is without rational support
- 4) The award is base on “fairness” instead of precise terms of the CBA

Judicial deference



- Arbitration is what the parties agreed to during the negotiation of the CBA.
- Once the process runs its course the parties who have bargained and agreed to that process are not in a good position to renounce what they bargained.

Most decisions prevail



- The CBA is not intended to be a comprehensive document where the answer is always easily discerned.
- The arbitrator is expected to fill in the gaps.
- The arbitrator is designed to function alongside the labor contract in maintaining equity and a balance of power in the workplace.

The arbitrator is the surrogate



- The arbitrator is designed to function as the parties' surrogate.
- As such it cannot "misinterpret" the CBA.

Arbitrator and Judge



- This description is particularly relevant to the NECA-IBEW collective bargaining relationship.
- The NECA-IBEW LMC is treated with essentially the same deference as the typical single arbitrator.

Awards aren't judicial opinions



- Awards are a set of opinions expressing the meaning of the CBA as applied to a particular set of facts.
- Hence... “In the instant case...”
- The LMC is not bound by precedent
- Not generally subject to reversal

Deference to arbitrator



- The arbitrator is considered the same as a “neutral”
- Do not have to explain their rulings
- Court has stated the arbitrator “has... no obligation to give reasons to their awards”
- Arbitrators must maintain neutrality to avoid appearance of “industrial justice”
- Recusal may be required
- Prudent Man Theory

Rule setting



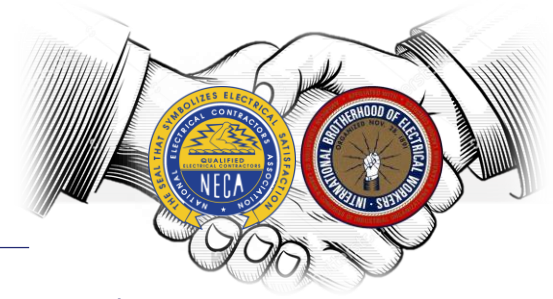
- Both sides are given the opportunity to present their positions.
- Beyond that, the panel is generally free to set its own rules.
- The parties may bar outsiders from the proceedings.
- There is no requirement that the matter be transcribed or even tape-recorded.

Rule setting continued



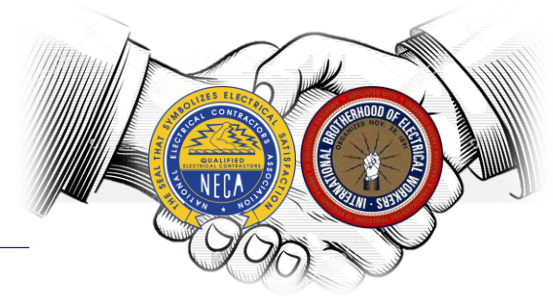
- There is generally no right to prehearing discovery.
- Hearsay may normally be permitted in an LMC meeting.
- The parties decide whether attorneys are used in LMC proceedings.

Assent “A” authority



- Under the Letter of Assent A, the parties are the NECA chapter and the local union.
- Each employer has designated the chapter as its representative "for all matters contained in or pertaining to the current and any subsequent approved ... labor agreement."

Punitive Remedies



- Damages that go beyond making persons or entities whole
- Such awards are considered “industrial justice” and unenforceable

Dorado Beach Hotel v. Local 610 (1992)

Bethlehem Steel v. United Steel Workers (1991)

Westinghouse Electric v. IBEW (1978)

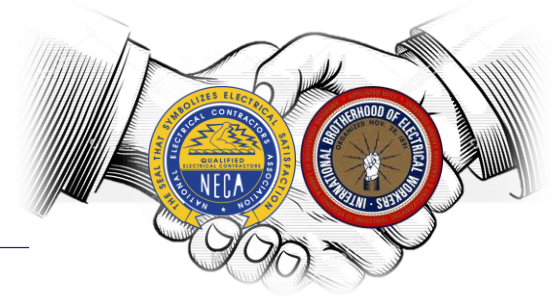
Vacated Penalties



- 1) Award paid to the union rather than an individual grievant
- 2) Compensation awarded when no other actual damages were shown

Island Creek Coal v. UMW (1994)

Breach and loss relationship



- An award is punitive if the undisputed facts establish aggrieved employees did not suffer monetary loss.

Remedies consistent with CBA



- Arbitrators cannot ignore plain and unambiguous language
- Arbitrators may not insert new rules into CBA

The LMC has few limitations



The typical local IBEW and NECA agreement does not contain any limitations upon the authority of the LMC or, for that matter, the CIR.

There is no explicit limitation prohibiting the arbitrator from modifying or amending the contract.

The typical agreement does not contain any language that would limit the arbitrator's authority to take into account a variety of factors in reaching a result.

The "standard" NECA agreement does not contain provisions that set forth termination as the penalty for a series of explicit offenses.

If the collective bargaining agreement were to contain those provisions, a decision by the LMC modifying a discharge for engaging in one of the prohibited acts would be more vulnerable to attack than in the absence of such conduct.

Application of external law



- No requirement to resolve claims by reference to federal or state law*
- Normally limit consideration to contractual issues
- Questions of legality left to those authorized by law to resolve such questions

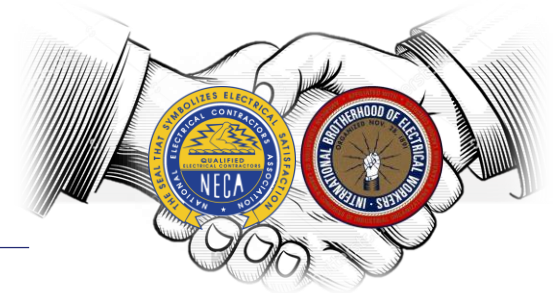
*except for certain ULP matters

NLRB Update



- In the past the standard NLRB policy was to defer to the CBA arbitration that followed generally recognized guidelines referring to fairness, mutual agreement and consideration of ULP issues. (Collyerizing).
- That changed in 2014 (Babcock& Wilcox)

NEW STANDARD



- The Arbitrator is explicitly authorized to decide the ULP charge (This requires precise language in the CBA)
- The arbitrator was presented with and considered the statutory issue.
- The decision discusses the the ULP allegation and explains the finding.
- The decision is consistent with NLRB remedies

What does it all mean?



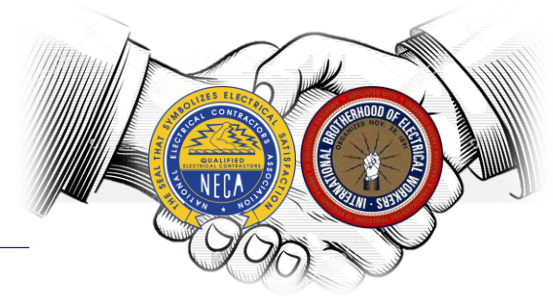
- The LMC generally has the same authority as neutral single arbitrators or the CIR.
- Their non-deadlocked decisions are final and binding.
- Courts will sustain decisions if supplied with rational basis for the award or remedy by the defending party.



GRIEVANCE HANDLING



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CBA LANGUAGE INCLUDES:

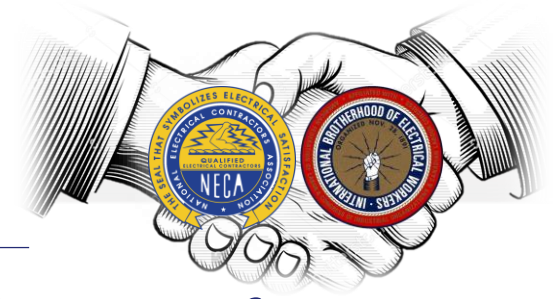
- Category I language
- Category II language
- Optional Language
- Local Chapter language

Local Chapter Language



- Should be regularly reviewed for:
 - Purpose
 - Intent
 - Clarity

CBA Language History



- For future reference, maintain a history of:
 - Who proposed it
 - Its purpose
 - Its intent (how it should be applied)
 - Illustrative examples

The LMC Committee



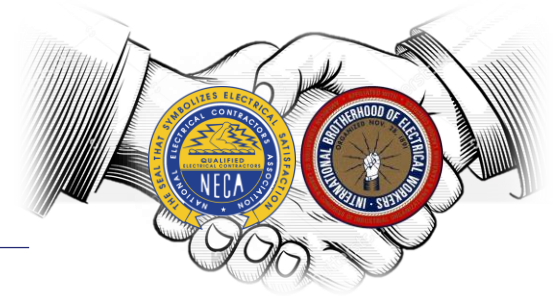
Eight principles followed by a good Labor Management Committee member:

1. Long term assignment
2. Commitment
3. Knowledge of the CBA & its history
4. Peer respect from both Labor and management



- Eight principles (cont.)
5. Authoritative leader
 6. Articulate
 7. Able to stand one's ground
 8. Non-advocate

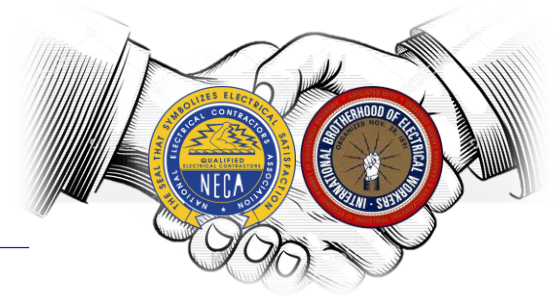
Purpose of the Committee



- Act as an impartial “judicial” body
- Interpret the existing agreement
- Discern the intent of the parties to the CBA
- Different from a negotiation meeting

PROCEDURES

First Steps



- Employee files a grievance
- Employer's Representative on the job attempts a resolution
- Authorized Representatives to the CBA attempt resolution
- Dispute is referred to the Labor Management Committee

Effective adjudication



- Labor Management Committee should strive to produce something other than a deadlock.
- Remember, the committee is an impartial interpreter of the existing agreement.

Uniform Rules



- Uniform rules should cover:
 - Oral and Written notice
 - Chairperson selection
 - Secretary selection
 - Orderly presentation procedures

Oral and Written Notice



- ASAP
- Oral and Written
- Include all affected parties
- Include: Charges involved

Date, time and meeting location

E-mail notice should be followed up by USPS mailing with return receipt.

Chairperson



- Ideally this should be someone able to preserve order and conduct a fair hearing
- Selection process varies from area to area

Secretary



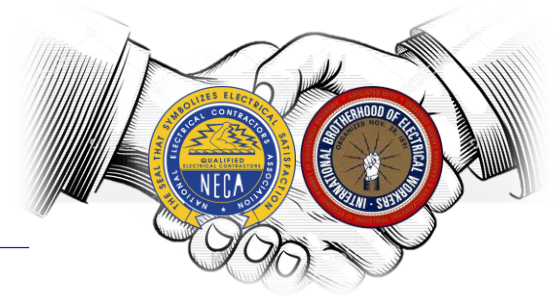
- This should be someone able to record minutes objectively
- Selection varies from area to area

Orderly Procedures



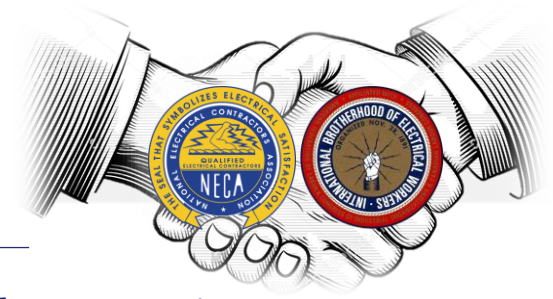
- If there are no pre-existing standing policies or set of procedures the committee should agree on a procedure prior to beginning a hearing

Recommended Sequence (Parties present their position)



- Charging party presents its case
- Defending party presents its case
- Charging party gets to rebut defending party's presentation
- Defending party then rebuts charging party's presentation

Recommended Sequence (LMC Deliberation)



- Committee members question both parties
- Committee then excuses all witnesses and parties to the dispute
- Committee deliberates and reaches a decision
- Committee distributes the decision to all parties as soon as possible and practical

General Considerations (Decisions)



- Phrase the charges briefly and in non-inflammatory terms
- Phrase the decision factually, without editorial comment or judgmental language
- Recognize that frequent a cause of disputes pertain to so called “area practice” or “common practice” not contained in the CBA
- Once the LMC issues a decision all parties are bound by it

General Considerations (cont.)



- If the Committee deadlocks, either party has the right to submit the matter to CIR for adjudication
- That will initiate the “Interim Committee” process bringing in representatives from the I.O and National NECA
- They will attempt to assist the parties in reaching a local settlement of the matter



QUESTIONS ?