NCMA

National Construction and Maintenance Agreement

Lockout / Work Stoppage Procedure

NABTU North America's Building Trades Unions

THE ASSOCIATION of UNION CONSTRUCTORS

Built with the strength of North America's Building Trades Unions in partnership with The Association of Union Constructors

NATIONAL CONSTRUCTION AND MAINTENANCE AGREEMENT POLICY COMMITTEE – LOCKOUT/WORK STOPPAGE PROCEDURE

Introduction

The National Construction and Maintenance Agreement Policy Committee, Inc. (NCMAPC) seeks to continually improve the NCMAPC Program and remain at the forefront of the union construction industry. In keeping with this goal, the NCMAPC has developed a lockout and work stoppage procedure to assist parties' signatory to the National Construction and Maintenance Agreement (NCMA) should an alleged violation of Article XXII – Lockout and Work Stoppage occur.

As part of these procedures, the NCMAPC reiterates that during the term of any NCMA, **"there shall be no lockouts by the Employer and no strikes, picketing, work stoppages, slow downs or other disruptive activity for any reason by the Union or by any employee"**. Further, any alleged violation(s) pertaining to Article XXII of the Agreement shall be resolved in accordance with these procedures and NCMAPC Policy Decision XXII – 3, entitled "Penalty Schedule for Violations of the Lockout and Work Stoppage Provisions".

Proper Submission of Lockouts and Work Stoppages

Before a lockout or work stoppage can be considered by the permanent Arbitrator, the party or parties alleging a violation of Article XXII must first notify the NCMAPC Impartial Secretary/CEO in writing on official letterhead via FAX and/or e-mail of the alleged violation within twenty-four (24) hours of the occurrence of the alleged incident. Parties that may submit a notification of an alleged lockout or work stoppage are limited to those signatory to the Agreement and that posses an approved Site Extension Request (SER) with the party or parties that they are alleging a violation of Article XXII against. However, parties should also be cognizant of NCMAPC Policy Decision XXII – 2, entitled "Obligations When the National Construction and Maintenance Agreement Have Not Been Requested and/or Extended by a Participating International Union". In the event that a lockout or work stoppage occurs on a weekend, or holiday recognized by the NCMAPC, then the invoking party or parties may submit their notification on the next regular working day. Notifications received outside of these time frames will be considered untimely, and no action will be taken by the NCMAPC. All notifications must include detailed information pertaining to the alleged violation, including but not limited to: date, time, location, parties involved, description of work, and a statement of the facts surrounding the incident. Notifications may be sent via or e-mail to the NCMAPC office with duplicate copies of the notice to be sent to the other affected parties. (Contractor in the event of a Lockout or International Union in the event of a Work Stoppage) Contact information for the NCMAPC office, NCMAPC participating International Unions and NCMAPC Contractors can be obtained via the NCMAPC website at www.NCMAPC.org, or by contacting the NCMAPC administrative office directly.

NCMA Work Performed on "Yellow Card" Sites and Projects

Lockouts and work stoppages involving work being performed on "Yellow Card" Sites and/or "Yellow Card" Projects, which are defined as owner facilities and/or Scopes of Work that have been formally reviewed and approved by the NCMAPC, will be subject to the following procedures;

1. Upon receipt of a proper submission of an alleged lockout or work stoppage as outlined above, the NCMAPC office will contact the permanent Arbitrator in an attempt to schedule a hearing within twenty-four (24) hours. If the notification is received on Friday, a hearing may be scheduled for that Saturday.

2. The NCMAPC office will communicate via e-mail to all of the affected parties identified in the notice of an alleged lockout or work stoppage, the date, time, and location of the hearing (hearings are typically held in the Washington, D.C. Metropolitan area). The NCMAPC office may provide duplicate communications to the owner representative(s) affected by the alleged incident.

3. Following the hearing, the NCMAPC Impartial Secretary/CEO will provide the permanent Arbitrator's decision to all of the affected parties via e-mail.

Traditional NCMA Work (Non-"Yellow Card")

Lockouts and work stoppages involving work that is NOT being performed on a "Yellow Card" Site or on a "Yellow Card" Project, will be subject to the following procedures;

1. Upon receipt of a proper submission of an alleged lockout or work stoppage as outlined above, the NCMAPC administrative office will communicate via e-mail to all of the affected parties identified in the notice of an alleged lockout or work stoppage, and request that the parties signatory to the Agreement take immediate action to resolve any alleged violations that may exist. The NCMAPC office may provide duplicate communications to the owner representative(s) affected by the alleged incident for informational purposes. No hearing will be scheduled at this time.

2. If the alleged violation(s) is not resolved and continues into subsequent shifts, either on the same or following day, it is the responsibility of the original complainant to again notify the NCMAPC Impartial Secretary/CEO using the same procedures as before advising that the alleged lockout or work stoppage has not ceased.

3. Upon receipt of the second notification of an alleged lockout or work stoppage, the NCMAPC administrative office will contact the permanent Arbitrator to schedule a hearing within twenty-four (24) hours. If the notification is received on Friday, a hearing may be scheduled for that Saturday.

4. The NCMAPC administrative office will communicate via e-mail to all of the affected parties identified in the notice of an alleged lockout or work stoppage, the date, time, and location of the hearing (hearings are typically held in the Washington, D.C. Metropolitan area). The NCMAPC office may provide duplicate communications to the owner representative(s) affected by the alleged incident.

5. Following the hearing, the NCMAPC Impartial Secretary/CEO will provide the permanent Arbitrator's decision to all of the affected parties via or e-mail.

Hearing Procedures

The purpose of a hearing is to determine whether or not a violation of NCMA Article XXII has occurred. The NCMAPC has granted the permanent Arbitrator sole authority in determining whether or not a violation has occurred.

Once a hearing has been scheduled the affected parties will be afforded an opportunity to make a personal appearance and present their positions before the permanent Arbitrator. Failure of any party to attend shall not delay the admittance of evidence or the issuance of an award.

Hearing participants are limited to one (1) representative per affected party. The party alleging a lockout or work stoppage violation will be required to state its position first in the hearing before the respondent party(s) presents its position(s). Each party will be provided an opportunity to rebut or supplement its previous positions at the conclusion of the opposing party's(s) remarks. It is the policy of the NCMAPC that persons not directly party to the Agreement may not participate as an advocate, witness, or spectator, in the proceedings of any hearing involving lockouts or work stoppages. However, the NCMAPC has a longstanding policy of entertaining written positions, as part of the written record, from organizations not party to the Agreement. Consistent with the NCMAPC's longstanding position, participation in a hearing through either a personal appearance by outside legal counsel on behalf of a party or telephonically by any party will not be allowed.

Further, all determinations will be final and binding, and will be based on the facts presented and reviewed, both written and oral. In the event that the permanent Arbitrator finds that a violation of the Agreement has occurred, then the permanent Arbitrator will impose penalties, as outlined in Article XXII, Sections 8h or 8i of the Agreement, or in NCMAPC Policy Decision XXII – 3, and instruct the party(s) to cease any further lockouts or work stoppages. In addition, it is expected and understood that the parties involved in a lockout or work stoppage hearing will comply with any determination rendered by the permanent Arbitrator. Any party unwilling to comply with said determination may forfeit its ability to work under the terms of the National Construction and Maintenance Agreement in the future.

LOCK OUT / WORK STOPPAGE FORM FACT SHEET

☐ Check here if **Yellow Card Site** or **Yellow Card Project**

Party Alleging Lockout or Work Stoppage Violation:

_____

Party(s) in Violation of Article XXII: [Contractor or Craft w/ Local No(s).]

_____

_____

_____

Owner / Site - City / State:

_____

Date and Time Lockout or Work Stoppage Occurred:

_____

Work Schedule / No. of Workers / No. of Shifts:

_____

_____

Brief Statement of Facts:

_____

_____

_____

_____

_____

Individual submitting: _____

Title: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone: _____

E-mail: _____

(Attach Supporting Documentation)

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NATIONAL CONSTRUCTION AND MAINTENANCE AGREEMENT

ARTICLE XXII – LOCKOUT AND WORK STOPPAGE

1. During the term of this Agreement, there shall be no lockouts by the Employer and no strikes, picketing, work stoppages, slow downs or other disruptive activity for any reason by the Union(s) or by any employee. Failure of a Union, its local union, or employee to cross any picket line at the Employer's project site is a violation of this Article. Notwithstanding the foregoing, where this Agreement is limited to the scope awarded to the Employer, any Union that is not performing work on the project may picket or take other job action provided that the Union does not impede work being performed under this Agreement.

2. In the event that a local labor agreement expires and a subsequent work stoppage ensues, the Employer and its employees will continue to work since the intent of this provision is to allow work to continue as a benefit to the client. The wages and fringe benefits in the expired local labor agreement or as approved by the NCMAPC will remain in effect for all work covered under the terms of this Agreement until wages and fringe benefits are agreed upon and become effective for the recognized bargaining agent of the local employers and the affected Union(s).

3. Sections 1 and 2 of this Article shall not apply if the Employer signatory to this Agreement is a member of the current local negotiating committee or if said signatory Employer actively participates in local negotiations. In such cases, when a local labor agreement expires, the affected Union may withhold services from said Employer, but shall not interrupt the work of other Unions. Moreover, said Employer shall have the right to request in writing to the appropriate Union that Section 3 of this Article be waived in order to allow the Employer to participate in local negotiations. The Union has the sole discretion to grant such waiver and will communicate its decision in writing both to the Employer and affected Owner(s).

4. The Unions and their applicable local unions shall not sanction, aid or abet, encourage, or continue any work stoppage, strike, picketing or other disruptive activity which violates this Article and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activity which violates this Article. Any employee who participates in or encourages any activity which violates this Article shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the same project for a period of not less than ninety (90) days. Further, if a Union is unable to provide qualified replacements for those employees who are in violation of this Article by the beginning of the next shift, the Employer is free to hire from any source.

5. Neither a Union nor its local unions shall be liable for acts of employees for which it has no responsibility. A Union will immediately instruct, order and use its best efforts to cause its local union to cease any violation of this Article. If it complies with this obligation, the Union shall not be liable for unauthorized acts of its local union. The principal officers of the local union will immediately instruct, order and use their best efforts to cause the employees of the local union they represent to cease any violation of this Article. If it complies with this obligation, the local union shall not be responsible for unauthorized acts of employees it represents.

6. In the event of any work stoppage, strike, picketing or other disruptive activity in violation of this Article, the Employer, at its discretion and without penalty, may suspend all or any portion of the project work affected by such activity.

7. Any Union or affiliated local union which initiates, participates in, or supports a work stoppage, strike, picketing or other disruptive activity in violation of this Article agrees to pay liquidated damages as a remedy for said violation, in accordance with Section 8h. of this Article.

8. After all parties and the NCMAPC have been notified of an alleged violation, a party or the NCMAPC may institute the following procedure, in lieu of, or in addition to, any other action at law or equity.

a. To invoke the procedure, a party or the NCMAPC shall notify the permanent Arbitrator under this procedure through the NCMAPC Impartial Secretary/CEO. Notice to the Arbitrator, through the NCMAPC Impartial Secretary/CEO, shall be by mail, and/or e-mail with copies of the notice to be sent to the other parties.

b. Upon receipt of said notice the Arbitrator shall schedule and hold a hearing within twenty-four (24) hours, provided the invoking party contends that the violation still exists.

c. The Arbitrator shall notify the parties by mail and/or e-mail of the hearing's location. The hearing shall be completed in one session. A failure of any party to attend the hearing shall not delay the admittance of evidence or issuance of an award by the Arbitrator.

d. The sole issue at the hearing shall be whether or not a violation of this Article has in fact occurred. The Arbitrator's award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The Arbitrator may order cessation of the violation of this Article, and such award shall be served on all parties by hand delivery, mail, and/or e-mail.

e. The Arbitrator's award may be enforced in the following manner by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove. Mailed and/or e-mailed notice of the filing of such enforcement proceedings shall be given to all parties. In a proceeding to obtain a temporary order enforcing the award, all parties agree to waive the right to a hearing and agree that such proceedings may be ex-parte. Such agreement, however, does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order enforcing the award shall be served on all parties by hand, by delivery to their last known addresses or by registered mail.

f. Any rights created by statute or law governing arbitration proceedings that are inconsistent with the above procedure or that interfere with compliance herewith are waived.

g. The fees and expenses of the Arbitrator shall be paid by the party or parties found in violation of this Article. In the event no violation of this Article is found, such fees and expenses shall be paid by the invoking party.

h. If the Arbitrator determines in accordance with Section 8d. above that the Union and/or its local union has violated this Article, the Union and/or its local union shall direct all of the employees they represent at the project to immediately return to work within eight (8) hours of receipt of the award. If the employees do not return to work by the beginning of the next regularly scheduled shift following receipt of the Arbitrator's award, and the Union and/or its local union have not complied with Section 5 above, the Union and/or the local union shall pay the sum of twenty-five thousand dollars ($25,000.00) as liquidated damages to the affected owner, and shall pay an additional twenty-five thousand dollars ($25,000.00) per shift for each shift thereafter on which the employees have not returned to work. The Arbitrator shall retain jurisdiction to determine compliance with this section and Section 5.

i. If the Arbitrator determines in accordance with Section 8d above that the Employer has engaged in an illegal lockout in violation of this Article, the Employer shall notify the Union that the illegal lockout has ended within eight (8) hours of receipt of the award. If the illegal lockout is not ended by the beginning of the next regularly scheduled shift following receipt of the Arbitrator's award, then the Employer shall pay the sum of twenty-five thousand dollars ($25,000.00) as liquidated damages to the Union, and shall pay an additional twenty-five thousand dollars ($25,000.00) per shift for each shift thereafter on which the Employer continues to illegally lockout its employees covered by this Agreement. The Arbitrator shall retain jurisdiction to determine compliance with this section.

9. The procedures contained in Section 8 through 8i shall be applicable to alleged violations of this Article. Disputes alleging violation of any other provision of the Agreement, including any underlying dispute alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved under the grievance procedures of Article VI.



NCMA

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