NCMA

National Construction and Maintenance Agreement

Grievance 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 – GRIEVANCE PROCEDURE

Introduction

The National Construction and Maintenance Agreement Policy Committee (NCMAPC) seeks to continually improve the NCMAPC program and remain at the fore front of the union construction industry. In keeping with this theme, the NCMAPC has seen a need to revise the grievance procedure contained in the National Construction and Maintenance Agreement to maintain its integrity and efficiency.

As part of these amendments the NCMAPC, Inc. reiterated that the Committee has the sole authority to interpret the terms of the National Construction and Maintenance Agreement. Further, determinations rendered by the Committee are final and binding. Since its inception, the Committee has addressed a number of issues, many of which have resulted in the development of policy decisions; these decisions can be referenced in the NCMAPC Book of Decisions.

Proper and Timely Submission of Grievances

Before a grievance shall be considered by the Subcommittee, the parties must comply with the procedures set forth in Article VI of the Agreement. All grievances must be filed within ten (10) calendar days after the complained-of event arose. Grievances shall be appealed to the next highest step within ten (10) calendar days after the meeting in the lower step, although the parties may, by mutual agreement in writing, waive this time limit. This ten (10) day time limit applies only to Steps 1 through 3 of the grievance procedure. Grievances submitted to Step 4 should be submitted as soon as possible, and must be received no less than thirty (30) days prior to the next scheduled meeting of the Grievance Review Sub-Committee to ensure consideration at that meeting. However, upon completion of Step 3, grievances that are not submitted to Step 4 within two (2) regularly scheduled quarterly meetings shall be considered untimely, unless the parties mutually agree to extend this time frame in writing. Settlement of grievances may be arrived at in any step of the grievance procedure which shall be final and binding upon the parties, but any such settlement shall not establish any precedent or have any impact on NCMAPC policy.

The steps in consideration of any grievance shall be: first between the employer's supervisor and the Local Union steward at the job site; second, between the business representative and the employer's supervisor at the job site; third, between the International Union representative and the supervisor or Labor Relations Manager within the time limits previously stipulated. Grieving parties are urged to document the meetings involved in the above Steps 1 through 3 in writing and provide such documentation to the opposing party. Said documentation should be included when submitting a grievance to Step 4 or when providing a written position at Step 4 of the grievance procedure.

Only where the parties have followed the above procedure and have failed to reach an amicable settlement or adjustment at any lower step shall the grievance be submitted to Step 4 of the grievance procedure for consideration. It shall be the burden of the party pursuing the grievance to ensure proper compliance with the previous steps of the grievance procedure. Contractors wishing to pursue a grievance under Step 4 must complete the NCMAPC Grievance Form Fact Sheet, which can be downloaded from the NCMAPC website at **www.NCMAPC.org** or by contacting the NCMAPC administrative office, and submitting all information directly to the NCMAPC administrative office. Any local union wishing to submit a grievance to Step 4 of the grievance procedure must do so through its International Union.

Submission of Grievances to Step 4

Any grievance formally submitted to Step 4 of the grievance procedure must be filed on the NCMAPC Grievance Form Fact Sheet with the NCMAPC administrative office, and must include a statement of the procedural history of the grievance verifying that the parties have complied with the lower steps of the grievance procedure and have been unable to effect a settlement. The grievance must also include a concise statement of procedural issue(s), if any; a concise statement of substantive issue(s); reference to specific applicable provisions of the Agreement and/or relevant NCMAPC policy decisions; a brief statement of the facts; a short statement of the rationale why the grievance should be sustained; a request for specific remedy; along with any relevant documentation for consideration of the specific grievance, as well as any written documentation indicating the completion of Steps 1 through 3.

Upon receipt of a grievance formally submitted to the NCMAPC administrative office for processing under Step 4, the NCMAPC administrative office will send the opposing party a copy of the completed Grievance Form Fact Sheet requesting that the party submit a formal position in the matter. The opposing party will be directed to submit its position and all related documentation to the NCMAPC administrative office via regular mail, overnight delivery, facsimile or email to ensure receipt by the NCMAPC administrative office **no later than 5:00 p.m. (EST) on the specified date.** The "specified date" will consist of ten (10) working days beginning with the date of the formal NCMAPC letter of notification to the opposing party. It is important for all parties to note that this designated date is considered as a **deadline for all concerned parties** to submit any and all documentation pertaining to the grievance. Thereafter, the written record for the grievance will be considered closed on the designated date specified in the letter from the NCMAPC and no further written information will be accepted unless received by said date or unless the NCMAPC administrative office has received a written request for a time extension. Any time extension will consist of a maximum of five (5) additional business days for submittal of a position beyond the original designated date.

On the designated date, the NCMAPC administrative office will, under separate cover letter, provide each party with a copy of <u>all</u> documentation submitted under Step 4 of the grievance procedure to the NCMAPC administrative office by and on behalf of the parties in conjunction with the dispute. Further, the parties are advised at that time that the written record on the matter is considered closed and no further documentation will be accepted; however, the parties are afforded and encouraged to supplement the written record by making a personal appearance before the Grievance Review Subcommittee which will conduct a formal hearing of the grievance. If a party fails to submit a position in a timely manner, the dispute will be addressed regardless, which may result in a decision sustaining the grievance against the party failing to submit a position. **All decisions rendered at Step 4 of the grievance procedure shall be final and binding, and shall not be subject to any appeal.** Further, all determinations will be based on the facts presented and reviewed, both written and oral, in each case and will apply to that specific grievance.

Grievance Review Subcommittee

As noted previously, the NCMAPC, Inc. has granted expanded authority to the Grievance Review Subcommittee to settle grievances submitted to Step 4 of the grievance procedure. The Grievance Review Subcommittee will consist of the following: five (5) NCMAPC management representatives; five (5) NCMAPC labor representatives; and one (1) NCMAPC staff representative, with five (5) representatives making a quorum provided at least two (2) representatives each from management and labor are present. The Subcommittee will meet on an as needed basis to hear and adjudicate grievances as quickly as practical, typically at the NCMAPC administrative office. In addition, a party submitting a grievance to Step 4 may request an expedited hearing of the matter. The expedited processing of a grievance will typically occur within thirty (30) days from the date that the NCMAPC administrative office receives the dispute from the requesting party.

Once a Step 4 hearing before the Grievance Review Subcommittee is scheduled, the parties to the grievance will be afforded an opportunity to appear before the Subcommittee in order to supplement the written record. Appearances by interested parties from the affected local union will be at the discretion of the affected International Union. **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 the NCMAPC Grievance Review Subcommittee at the fourth step of a grievance. However, the NCMAPC has a longstanding policy of entertaining written positions, as part of testimony, 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. When parties to a grievance make a personal appearance before the Subcommittee in order to supplement the written record previously submitted with an oral presentation, each party will be limited to ten (10) minutes in which to present their respective positions. The ten (10) minute time limit will not include time involving questions and answers posed through the Subcommittee Chairman, or rebuttals offered by the parties through the Chair. Further, the presiding Chairman will retain the authority to waive this time limit at his discretion should he deem it appropriate. The Subcommittee will rule on grievances by a majority vote through a secret ballot process. Any labor or management member of the Grievance Review Subcommittee whose organization is party to a grievance brought before the Subcommittee to be heard at Step 4 will not participate in any post-hearing deliberations and subsequent determinations pertaining to such grievance. In those instances where the Subcommittee's vote may result in a deadlock, the matter will be referred to the next regularly scheduled meeting of the NCMAPC Labor-Management Committee for a full hearing of the **written record only**. All decisions rendered by the Grievance Review Subcommittee at Step 4 of the grievance procedure shall be final and binding, except in the case of a deadlock vote, and shall not be subject to any appeal.

In addition, it is expected and understood that the parties involved in a Step 4 proceeding will comply with any determination rendered under the grievance procedure. While any determination rendered at this step of the grievance procedure is essentially an arbitration decision enforceable in Federal District Court, 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.

These revised guidelines for grievance procedure under the National Construction and Maintenance Agreement have streamlined the consideration of many disputes, allowing for quicker resolution of outstanding issues. As always, the National Construction and Maintenance Agreement Policy Committee remains the only body with authority to interpret the terms of the National Construction and Maintenance Agreement. By modifying this process, it is envisioned that the National Construction and Maintenance Agreement will more effectively serve the needs of employers, workers and their unions, and the entire industry**.**

NATIONAL CONSTRUCTION AND MAINTENANCE AGREEMENT
ARTICLE VI-GRIEVANCES

1. Except for jurisdictional disputes and those involving general wage rates, all disputes and grievances arising out of work performed under this Agreement involving the meaning or interpretation of any provision in this Agreement, or involving the meaning or interpretation of any provision in any other agreement incorporated by reference in this Agreement shall be resolved in the following manner:

    a. All Grievances shall be filed within ten (10) calendar days after the complained-of event arose. Grievances shall be appealed to steps two (2) and three (3) within ten (10) calendar days after the meeting in the lower step. Settlement of grievances may be made at any step of the grievance procedure and shall be final and binding on the Union and Employer.

Step 1. Between the Employer's Supervisor and the Local Union Steward at the job site.

Step 2. Between the Business Representative and the Employer's Supervisor at the job site.

Step 3. Between the International Union Representative, and Employer's Supervisor or Labor Relations Manager.

Step 4. If the parties are unable to settle or resolve any grievance or controversy, the matter shall be submitted to the NCMAPC for a decision to become effective immediately.

Step 5. Failure of the NCMAPC to reach a decision shall constitute a basis for a submittal of the question by the affected parties to the American Arbitration Association for a binding decision. In such instances, the affected parties to the dispute shall appoint an arbitrator to review the matter and render a binding decision. If the parties are unable to agree upon an arbitrator, the American Arbitration Association shall appoint one. The affected parties to the arbitration shall equally share in the costs, including printing and publications of any record of such arbitration.

b. The Arbitrator shall only have jurisdiction and authority to interpret, apply or determine compliance with the provisions of this Agreement. Any award of the Arbitrator shall be final and binding upon the Employer and the Union. The Arbitrator shall submit a copy of the award to the NCMAPC after the award is rendered.

GRIEVANCE FORM FACT SHEET*

(Pages 1 & 2 must be completed for submission to the
National Construction and Maintenance Agreement Policy Committee)

Party filing grievance:

_____ **vs.** _____

_____ _____

Pertinent Information

Client/Location:

_____

Date grievance occurred:

_____

Applicable agreement provisions allegedly violated (be specific):

_____
_____

Applicable NCMAPC policy decision (if any):

_____
_____

Brief statement of facts:

_____
_____
_____
_____
_____
_____
_____
_____

Remedy sought:

_____
_____
_____

Individual submitting: _____

Title: _____

Address: _____

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

Phone: _____

E-mail: _____

*Copies of the Grievance Form Fact Sheet may be obtained from the respective participating International Unions or www.NCMAPC.org.

Grievance Meetings

Briefly state in the space provided the following pertinent facts:

Date of meeting; whether in person or by telephone; location of meeting, if appropriate; those in attendance, briefly state the issues of discussion and if any agreement or consensus reached. Grieving parties are urged to document the meetings involved in Steps 1 through 3 in writing and provide such documentation to the opposing party. Said documentation should be included when submitting a grievance to Step 4.:

Step 1. Date: _____ Location: _____

Step 2. Date: _____ Location: _____

Step 3. Date: _____ Location: _____

(Attach Supporting Documentation)

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