

Failing To Follow Joint Board Award Escalates Penalty By Almost \$3.5 Million

Steep Punishment Serves As Cautionary Tale For Contractors

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Many collective bargaining agreements (“CBA’s”) in the construction industry provide for some form of joint grievance board, which consists of “arbitrators” appointed by the union and an equal number appointed by the employer association. Over the years, I have seen many contractors fail to take these joint boards seriously—usually with disastrous consequences. A July 2010 decision by the federal court in Chicago (approving an award exceeding \$3.5 million) highlights the consequences of not abiding by a joint board decision.

In *Vinco Painting Inc. v. Painters District Council No. 30*, the Painters Union filed grievances against Vinco Painting Inc. (“Vinco”) alleging that the company had violated the CBA by: (1) laying off four employees without providing them their final paychecks or compensating them properly for overtime work; (2) failing to provide proper paycheck stubs to two of the employees; and (3) failing to report all of the hours owed to the benefit funds office.

A hearing was scheduled before the Joint Trade Board (“JTB”), which consisted of four representatives appointed by the Union and four appointed by the Finishing Contractors of Illinois. The JTB found in favor of the Union in January 2008. However, when the Union tried to enforce the JTB’s decision, the court remanded the charges back to the JTB because the Union had failed to provide Vinco with sufficient notice of the hearing. The Union then re-filed the same charges; this time, Vinco received proper notice of the JTB hearing. The Union also added some additional claims that Vinco failed to follow the CBA, such as failing to renew its certificate of insurance and to have an adequate surety bond.

Vinco attended the second hearing. The Company tried to bring its own attorney, but the rules of the JTB precluded either side from having an attorney. On the other hand, the JTB had an attorney present and, not surprisingly, the attorney for the JTB was also the attorney who regularly represented the Union.

At the end of the hearing, the JTB found that Vinco had violated certain portions of the CBA, and it ordered Vinco to pay approximately \$3,000 to three employees—plus a fine of \$55,439 payable to the Union. The decision of the JTB was sent to Vinco on October 17, 2008.

Because it failed to comply with the award by December 18, 2008, additional charges were filed by the Union. A hearing was held on the additional charges in February 2009. After the hearing, the JTB unanimously found that Vinco had failed to comply with the JTB’s October 2008 ruling, and it ordered the company to pay fines and back wages totaling over \$3.5 million. The principal basis for the fines was a \$2,500 per day penalty for each of the violations of the CBA.

Vinco then brought suit in federal court in an effort to have the JTB decision vacated. Vinco had three principal arguments: (1) the arbitration hearings were unfair and violated due process; (2) one of the JTB members (the Secretary/Treasurer of the Union) was impermissibly biased and should have been excluded from the decision making; and (3) the size of the awards were excessive. The judge denied all three grounds.

According to the court, an arbitration hearing only needs to be “fundamentally fair”, and it satisfies this standard if it “meets the minimal requirements of fairness—adequate notice, a hearing on the evidence and an impartial decision by the arbitrator.” In the judge’s opinion, these requirements were satisfied. Similarly, the judge found that, in the absence of direct evidence of



bias, the Union official’s animosity towards Vinco was not sufficient to overturn the arbitration award. In this regard, the judge noted that none of management-appointed arbitrators ruled in favor of Vinco either, which indicated that the decision was not based upon the bias of one individual. With respect to the fines of \$2,500 per day—which ended up totaling over \$3.5 million for a claim of approximately \$3,500 in back pay—the judge said that he was required to uphold the JTB’s award even if he thought it was “absurd.”

So, what does this decision mean to contractors? It means that contractors must take these joint grievance board hearings seriously. If a hearing is scheduled, the contractor should attend and raise his defenses—or be at risk of a default decision that can be enforced against it. When attending, the contractor should put on all of its evidence and make all of its arguments—otherwise it might waive the right to rely on that evidence or argument in any future proceeding. And finally, if the JTB makes a decision against the contractor, it must either abide by that decision, promptly go to court to try to vacate it, or, at the very least, determine the potential consequences of a failure to abide by the decision (remember, not all CBA’s or joint board procedures give the power to levy fines).

While most joint boards do not have the right to impose penalties that come even close to the type of penalties in this case, you can be certain that this decision will result in more and more union efforts to add such penalties to their CBA’s and to the “rules” of their joint grievance board. Contractors must be vigilant to avoid being “Vinco-ized.”