

SELECTED AREAS OF COST

Chapter 39 – Labor Settlement and Strike Period Costs

Authoritative Sources

[FAR 31.205-6](#) Compensation for Personal Services

[FAR 31.205-15](#) Fines, Penalties, and Mischarging Costs

[FAR 31.201-3](#) Determining Reasonableness

[FAR 31.201-4](#) Determining Allocability

[FAR 22.101](#) Labor Relations

[48 CFR 9904.406-40\(b\)](#) Cost Accounting Period

This chapter addresses the following topics:

39-1 Labor Settlement Costs

39-2 Strike Period Costs

39-1 Labor Settlement Costs

Labor settlement costs (awards) can arise from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board. The awards generally involve a violation in one of three areas:

- Equal Employment Opportunity (EEO) laws,
- Union agreements, and
- Federal labor laws.

39-1.1 Types of Labor Settlement Awards

The award can be for compensatory damages, punitive damages, or underpayment for work performed, or it can involve fines and penalties. A settlement may include one or more of these type costs. FAR 31.205-15, Fine, Penalties, and Mischarging Costs, provides that any fine or penalty assessed would be expressly unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

FAR 31.205-6(k) defines deferred compensation as an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Subject to FAR 31.205-6(a), deferred awards are allowable when they are based on current or future services. However, awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.

39-1.2 Case by Case Determinations

The allowability of settlement costs associated with other areas should be determined on a case-by-case basis after considering the surrounding circumstances; i.e., the auditor should look behind the settlement and consider the causes. If the dispute resulted from actions that would be taken by a prudent businessman (FAR 31.201-3), the costs would be allowable. However, if the dispute was occasioned by actions which appear unreasonable or were found by the agency or board ruling on the dispute to be caused by unlawful, negligent, or other malicious conduct, the costs would be unallowable and, should be questioned.

The allocability of these costs must be reviewed (see FAR 31.201-4). For CAS-covered contracts, the provisions of CAS 406.40(b) regarding treatment of prior period adjustments must be considered in determining the treatment of allowable backpay awards. As with other items of cost, if the amount of the award is not material, it can be treated as an indirect cost of the period incurred.

Very often there is a substantial time between when a suit is filed and payment of the award. An inequitable allocation to Government flexibly priced contracts would result where indirect employees are involved and there has been a substantial change in the flexible contract mix in the interim period. For example, if Government flexibly priced contracts represented 10 percent of a firm's business at the time the suit was filed, the Government should not be expected to pay more than 10 percent of the ultimate award.

39-2 Strike Period Costs

FAR does not provide specific guidance with respect to the allowability of costs during strike periods. Underlying this matter are considerations of public policy, and the difficulties that would be encountered in any attempt to provide adequate coverage for the differing situations frequently precipitated by strikes. As a result, the allowability of costs during strike periods shall be considered on an individual case basis.

FAR 22.101-1(b) states that "Agencies shall remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute." FAR 22.101-2(b) provides that in the event labor disputes give rise to work stoppage, "Contracting officers shall impress upon contractors that each contractor shall be held accountable for reasonably avoidable

delays." "All costs incurred during strikes shall be carefully examined to ensure recognition of only those costs necessary for performing the contract in accordance with the Government's essential interest." (see FAR 22.101-2(c)).

Strike period indirect costs included in contractors' cost representations should be identified and segregated into the following categories to facilitate a determination as to allowability, allocability and reasonableness of the costs:

- (1) Costs directly attributable to the strike, which would not have been incurred otherwise, such as extra security guards, special legal expense, arbitration costs, etc.
- (2) Costs which were abnormally higher during the strike period, such as recruitment, training of new employees, etc.
- (3) Audit determination of indirect costs of a continuing nature, such as cost of normal plant maintenance, depreciation, rent, other fixed charges, supervisory and administrative personnel, etc., will depend on reasonableness, within the framework of existing circumstances with respect to the strike; the extent to which subsequent production makeup operations were undertaken to maintain production schedule; the action taken by the contractor to minimize costs during the period; and such other factors as have a bearing on the expeditious settlement of the dispute.

Allocating indirect costs during a strike period to a contractor's commercial or defense work may consider the total period covered by the labor agreement signed at the conclusion of the strike as the basis for allocating strike period costs. Where, for example, a 3-year labor agreement is reached, a proration or amortization of strike period costs over production during the next three years may be appropriate.