



1). How do the legal actions you've taken so far affect effects bargaining?

Answer: The Unfair Labor Practice charges (“ULPs”) do not *directly* impact effects bargaining. Microsoft cannot condition effects bargaining on settling the ULP because the settlement of National Labor Relations Board (“NLRB”) charges is a permissive subject of bargaining, meaning CWA is not legally required to bargain over it. Microsoft conditioning the outcome of effects bargaining on the resolution of the ULPs would violate the law.

Although the ULPs are a separate avenue for obtaining a legal remedy, they are also a powerful negotiating tool for CWA during effects bargaining, and CWA is using all available tactics to pressure Microsoft to make a fair deal for bargaining unit members.

2). Are there differences with WARN notices being that I am remote in California (also NY)? Are there variations in the laws because of this situation?

Answer: No. The WARN notice follows the legal requirements of your reporting location, Maryland or Texas. Employees who report to a Maryland location are also covered under the Maryland Economic Stabilization Act.

3). Does the employer have to serve individual written WARN notices to every impacted employee?

Answer: Yes. Every employee laid off receives a WARN notice if the total layoff meets the WARN Act requirements: 100 total employees or more, layoff hits 33% of the workforce at a single site.

4). If we find there is a legitimate case to prove the layoffs are illegal in some way, what happens then? What could we expect to get as a result from that?

Answer: Once the NLRB determines there is merit to the charge, a complaint will be issued that will be tried before an administrative law judge (“ALJ”). The ALJ decision can be appealed to the NLRB, which is made up of political appointees of the sitting president. A decision of the NLRB must be enforced in a federal circuit court. A prevailing party before the NLRB will receive reinstatement, backpay, and other compensation to make them whole for what they lost as a result of the illegal layoff. Backpay would be offset by interim earnings. Unemployment does not count as interim earnings, and backpay will not be reduced by unemployment benefits received.

5). If we successfully get a proper severance, are there any legal roadblocks that prevent us from accepting new job offers while on severance benefits?

Answer: CWA's goal in effects bargaining is to obtain an outcome where every laid-off employee receives severance regardless of employment status after the layoffs.

Employees are not entitled to severance benefits as a matter of law. As a result, there is generally no legal barrier preventing a laid-off employee from accepting a new job while receiving severance benefits. However, there is also no legal requirement that an employer continue paying severance to an employee who accepts other employment. Whether severance benefits continue after reemployment depends entirely on the terms of the severance agreement.

This is why CWA's goal in effects bargaining is to obtain an agreement that guarantees that every laid-off employee receives severance benefits, regardless of whether they obtain new employment during the severance period. This approach ensures that employees are not forced to choose between accepting a new job opportunity and receiving the severance benefits negotiated to help offset the impact of the layoff.

6). Is it legal to find a new job and delay starting until the severance is paid out?

Answer: Yes, but it is not necessary for employees to delay starting new employment until their severance benefits are paid out. CWA's goal in effects bargaining is to obtain an outcome where every laid-off employee receives severance regardless of employment status after the layoffs. Keep in mind that the pay you are receiving now through September 4th is not severance; it is pay in lieu of you working during the 60-day WARN period.

7). Is Microsoft legally required to engage in decisional bargaining if they claim entrepreneurial change or just effects bargaining?

Answer: These layoffs are not entrepreneurial in nature, despite what Microsoft claims. The Company, therefore, had to engage in decisional bargaining before layoffs and broke the law when it failed to do so.

Under federal labor law, employers are generally not required to bargain over decisions that are considered truly entrepreneurial in nature, although they are still required to bargain over the effects of those entrepreneurial decisions. These layoffs, however, were not an entrepreneurial decision, meaning Microsoft is legally required to bargain over both the decision to lay off employees *and* the effects of that decision.

8). If we are successful with the board charges, what happens? What about the 10j injunction?

Answer: The Company will be forced to bargain over the decision, and adversely impacted employees will be made whole, as explained above. If the NLRB decides to pursue 10(j), it will do so after the administrative law judge trial.

For context, an Administrative Law Judge (“ALJ”) hearing is essentially the first stage of the NLRB's litigation process. If the NLRB Regional Office finds merit in the CWA's unfair labor practice (“ULP”) charges and the case is not resolved through settlement, the NLRB's General Counsel will prosecute the case before an Administrative Law Judge. After the hearing, the ALJ issues a written decision determining whether the National Labor Relations Act was violated.

Either party may appeal the ALJ's decision to the NLRB, which currently consists of three presidentially appointed Board Members. The Board reviews the ALJ's decision and issues the agency's final decision, which may then be appealed to a federal court of appeals.

A Section 10(j) injunction is a request by the NLRB to a federal court for temporary relief to prevent ongoing harm and preserve employees' rights while the NLRB's administrative case is pending. While the Board can seek an injunction any time after the Complaint is filed, it usually waits until after the ALJ hearing.

9). What if I take a job during this continuation/WARN period? Will I miss out on severance?

Answer: As discussed previously, CWA's goal with negotiations in effects bargaining is to secure severance packages that do not require you to forego the WARN pay or severance regardless of when you have taken a job.

The WARN Act does not explicitly require employees who have received a WARN notice to inform their employer if they obtain new employment during the WARN notice period. Employees are generally free to seek and accept new employment without forfeiting their WARN rights. Any requirement to disclose new employment, or any impact on additional benefits beyond WARN pay, would depend on the terms negotiated in effects bargaining.

10). If we get our severance and we win with the NLRB- will we get our job back and have to deal with a clawback?

Answer: An NLRB award would likely require Microsoft to reinstate laid-off employees and issue backpay. Because the NLRB generally mandates only make-whole remedies, NLRB compliance would adjust backpay awards to prevent double recovery. Usually this is in the form of less back pay rather than a clawback of pay you previously received.

11). It sounds like we are officially unemployed as of September 4th whether bargaining is finished or not. If bargaining is not over by then, does that mean there will be a period of time after 9/4 where we are no longer on the payroll and have no severance while we wait for bargaining to finish? People are assuming the worst of Microsoft and think they may just slow bargaining.

Answer: If Microsoft intentionally delayed or prolonged effects-bargaining until after the WARN period expired, CWA would consider that conduct to be bad faith bargaining that CWA would fight. CWA would argue to the Board that Microsoft's escalating bad faith conduct necessitates the Board seeking a 10(j) injunction. I would caution that we need to take things as they come and see how things unfold.