



Responding to the Company's offer to return to work

Asarco has informed the Union that it will begin reinstating former strikers to open job positions at their pre-strike facility. Asarco says former strikers will be reinstated to their pre-strike positions or to substantially equivalent open positions. Employees selected for reinstatement will be given 10 days to notify Asarco about their decision and will be asked to pass a Company directed medical examination, including a drug and/or alcohol test. Asarco has informed the Union that it will not dismiss the replacement workers it hired during the strike nor will it displace any crossovers.

The Union believes that the way that Asarco is handling the return to work is unlawful on many grounds, including its reinstating former strikers under the terms of the last, best, and final offer that Asarco implemented on December 2, 2019, which the Company is doing because it believes that we were engaged in an economic strike. We believe, and the NLRB Regional Office in Phoenix has alleged in the June 15th Consolidated Complaint that we were engaged in an unfair labor practice strike and that the December 2nd implementation was unlawful. We will file new NLRB charges alleging that the Company's failure to immediately reinstate the returning strikers, dismiss the replacement workers and displace junior crossovers holding the returning strikers' pre-strike jobs, is unlawful.

1. You can accept the Company's "return to work" offer.

You can accept Asarco's return to work offer. If you do so, you will be working under the implemented proposal. The new NLRB charges that the Union will file will ask that you be made-whole for losses associated with working under the implemented terms, such as paying higher premiums and other increased health care costs, any lost Copper Price Bonus payments, and other possible changes. In addition, if you were assigned to a lower paying job, you may be entitled to a remedy under an NLRB charge.

As we have explained before, all of these rights are dependent upon our successfully proving that we were on an unfair labor practice strike. There will be a trial on the issues raised in the June 15th Consolidated Complaint before an NLRB administrative law judge (ALJ); no trial date has been scheduled because the NLRB is not presently scheduling trials in light of the COVID-19 pandemic. The ALJ's decision can be (and likely will be) reviewed by the NLRB in Washington, and then by a federal appeals court. If at any stage of the case we are unsuccessful in proving that we are on an unfair labor practice strike, there probably will be no remedy for you based upon the Company's assigning you to a different job or for you working under the implemented terms and conditions.

2. What happens if you want to decline the Company’s “return to work” offer?

If you refuse to work under the Company’s offer of reinstatement for a reason other than a failure to pass a return-to-work physical or drug screening, the Company will likely treat you as having resigned your job and will remove you from its “preferential hire list for reinstatement.”

If you decline the Company’s “return to work” offer, for any reason and regardless of the outcome of our NLRB case, you will most likely lose your eligibility for unemployment compensation benefits in both Arizona and Texas, because we expect that the unemployment compensation authorities in each state will treat you as having rejected suitable employment.

You should be aware that the NLRB has held in the past that a returning unfair labor practice striker may decide to reject an offer of reinstatement under unlawfully implemented changes to the terms and conditions, because the offer is not valid. Rejecting an offer of reinstatement on this basis bears significant risk for you because, if at any stage of the case, it is found that we were not engaged in an unfair labor practice strike and that the Company’s December 2nd implementation of changed terms and conditions was lawful, you likely will be found to have resigned your job. The Union, of course, will vigorously pursue the rights of its members, but these rights depend upon the NLRB and, ultimately, the federal appeals courts, agreeing with us. And, in any event, while you were awaiting an outcome, you most likely will be treated as disqualified for unemployment insurance benefits.

Bottom Line: How you respond to this type of “return to work” offer is a personal decision. No matter your choice, the Union’s goal is to ensure that our members have the necessary facts to make an informed decision.

The Company needs your updated contact information

All employees have an obligation to provide the Company with their current contact information.

If your contact information (including telephone number, email, or mailing address) has changed or needs to be updated, please contact the following individuals for the listed facilities:

Debbie McMorrow
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