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To Pay Or Not To Pay: Interpretation Of Section 302 Of The Labor Management Relations Act As Evidenced By Titan Tire

Dylan Mooney
American University Washington College of Law

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TO PAY OR NOT TO PAY:
INTERPRETATION OF SECTION 302 OF
THE LABOR MANAGEMENT
RELATIONS ACT AS EVIDENCED BY
TITAN TIRE

DYLAN MOONEY∗

In November 2013, the United States Court of Appeals for the Seventh Circuit held that the payments of full-time salaries to union representatives on leave from their previous employment were unlawful under Section 302 of the Labor Management Relations Act ("LMRA") in Titan Tire Corp. of Freeport, Inc. v. United Steel Workers. This decision overturned an arbitrator's award that had previously allowed payment of salaries to the union representatives. The majority found that the salaries of the representatives disproportionate to their previous salary, and thus, void against public policy. This decision directly opposes prior rulings by the Second, Third, and Ninth Circuits that allowed the payment of union representatives under Section 302 of the LMRA and creates a split among the circuits. This Comment argues that the Seventh Circuit’s ruling in Titan Tire was arbitrary. It will apply a hypothetical scenario with two analyses; one analysis will allow compensation and the other will deny compensation. This Comment will discuss the implications of both analyses and will examine how the Titan Tire decision is contrary to the legislative intent of Section 302 of the LMRA.

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∗Business and Marketing Editor, American University Business Law Review, Volume 4; Dylan Mooney is a 2015 J.D. candidate at the American University Washington College of Law. He would like to thank his family and friends for all of their encouragement over the years. He would also like to thank the entire American University Business Law Review staff for their hard work in editing this piece.
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INTRODUCTION

This Comment addresses the recent circuit split concerning the interpretation of Section 302 of the Labor Management Relations Act ("LMRA") with regard to the payment of on leave union representatives. Furthermore, it discusses whether Section 302 of the LMRA allows a company to pay a full-time salary of a union representative, who on leave will represent a company and its employees. The Seventh Circuit has taken an approach that expressly disagrees with the Third Circuit in its application of Section 302 of the LMRA in Titan Tire Corp. of Freeport,
Inc. v. United Steelworkers.\(^1\) The Seventh Circuit held that an arbitration award requiring the company to honor a contract provision for the payments of full-time union salaries of employees who took leave to hold local union office was void against public policy and directly violated Section 302 the LMRA.\(^2\) Furthermore, the court concluded that the union representatives’ compensation under the terms of the collective bargaining agreement was disproportionate with the officers’ former employment so as not to come within the Section 302(c) exceptions clause for payments made “by reason of” former employment.\(^3\) This Comment will apply two different approaches to a hypothetical issue under Section 302 of the LMRA and suggest which Circuit’s interpretation, if any, should be accepted in consideration of the effects it will have on employers, employees, and their union representatives.

Part II of this Comment examines the enactment of the LMRA from its inception and the purposes for the enactment of the statute. This Section reviews a plain meaning analysis of both Section 302(a) and 302(c). The focus then shifts to the various interpretations of Section 302 of the LMRA. Several circuits have expressly allowed payments of full-time union representative salaries under the LMRA, such as the Second, Third, and Ninth Circuits.\(^4\) A brief discussion of these decisions is examined, as these interpretations are in direct opposition of the Seventh Circuit’s ruling.

Part III applies a hypothetical issue with two different approaches. The hypothetical scenario involves a company that is unionized and allows an employee to take a leave of absence in order to fulfill a full-time union representative position for the company. One approach involves the Third Circuit’s reasoning and will allow compensation of the union representative under the LMRA. The second approach critiques the Seventh Circuit’s reasoning and denies compensation of the representative because of the increase in pay as a violation of Section 302 of the LMRA. In light of this hypothetical analysis, this Comment discusses the benefits and drawbacks

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1. 734 F.3d 708 (7th Cir. 2013).
2. See id. at 712.
3. See id. at 720 (emphasizing the plain language of Section 302 of the LMRA does not encompass payments to union representatives “by reason of” their service to the company).
4. Compare BASF Wyandotte Corp. v. Local 227, 791 F.2d 1046, 1048 (2d Cir. 1986) (explaining that payments to union representatives do not violate the LMRA); with Caterpillar, Inc. v. UAW, 107 F.3d 1052, 1054 (3d Cir. 1997) (noting that Section 302(c) of the LMRA may allow compensation to union representatives by the reason of the services they provide); and Int’l. Ass’n of Machinists & Aerospace Workers v. BF Goodrich Aerospace Aerostructures Grp., 387 F.3d 1046, 1060 (9th Cir. 2004) (elaborating that a union steward who files grievances on behalf of a company’s employees qualified his compensation as lawful under Section 302 of LMRA).
of the opposing interpretations of the hypothetical scenario.

Finally, Part IV explains that the Seventh Circuit interpretation in *Titan Tire* is contrary to prior case law and inconsistent with the legislative intent of Section of the LMRA and will have implications on future decisions involving payments to union representatives and whether they are unlawful under the LMRA.5

I. DEVELOPMENT OF THE REGULATION OF EMPLOYER PAYMENTS TO UNION WELFARE FUNDS

This Comment begins with a brief summary of the enactment of the LMRA as well as the specific language used in Section 302. The focus then shifts to the history of case law leading up to the *Titan Tire* decision.

A. LMRA Enacted to Combat Bribery and Coercion of Union Representatives

Senator Robert Taft and Representative Fred A. Hartley, Jr. sponsored the Labor Management Relations Act as a means of preventing bribery, extortion, and corruption of union representatives in 1947.6 Prior to the LMRA, the National Labor Relations Act was enacted in 1935.7 The LMRA amended the National Labor Relations Act and was met with much criticism, including a presidential veto by President Truman.8 The LMRA,

5. See, e.g., Shane Faman, *Supreme Court Hears Union Organizing Case*, TALK RADIO NEWS SERV. (Nov. 14, 2013), http://www.talkradionews.com/supreme-court/2013/11/14/supreme-court-hears-union-organizing-case.html#.Utl3vnn0Ds0 (addressing a recent Supreme Court oral argument that was heard to determine if a ground-rules agreement between an employer and its union is a "thing of value" under the LMRA).

6. See 93 CONG. REC. 4678 (1947) (noting that Congress required specific definitions of payable benefits in order to prevent union members from being controlled for political purposes or for political gain).


8. Compare Alexander Cockburn, *How Many Democrats Voted for Taft-Hartley?*, COUNTERPUNCH (Sept. 6, 2004), http://www.counterpunch.org/2004/09/06/how-many-democrats-voted-for-taft-hartley/ (reviewing how President Truman and others thought of the bill as nothing more than a "slave labor bill"), with Rich Yeselson, *Fortress Unionism*, DEMOCRACY: A.J. OF IDEAS (Summer 2013), available at http://www.democracyjournal.org/29/fortress-unionism.php (quoting President Truman as saying, the Taft-Hartley Act was "a shocking piece of legislation . . . is unfair to the working people of this country. It clearly abuses the right, which millions of our citizens now enjoy, to join together and bargain with their employers for fair wages and fair working conditions. Under no circumstances could I have signed this bill."). and SIDNEY M. MILIKIS & JEROME M. MILEUR, THE NEW DEAL AND THE TRIUMPH OF LIBERALISM, 139-40 (2002) (voicing the acting President of the Congress of Industrial Organizations (CIO) [before merging with the American Federation of Labor to
also known as the Taft-Hartley Act, regulates payments of employers to union representatives through Section 302 of the Act. The purpose behind the enactment of the LMRA is three-fold and includes: (1) the proscription of rights of both employees and employers in a workplace relationship, (2) the promotion of orderly procedures involving the interference of the rights of either party as well as the protection of their individual rights, and (3) definition of labor practices on both the part of employees and management.

B. Restrictions on Financial Transactions Involving Employers and Employees Within Section 302 of the LMRA

Section 302(a) of the LMRA states, "It shall be unlawful for any employer ... to pay, lend, or deliver, or agree to pay, lend or deliver, any money or other thing of value ... to any representative of any of his employees who are employed in an industry affecting commerce." The language within the statute is broad and over-inclusive, which allows for a wide variety of regulation of monetary items that could pass from an employer to its employees. The main focus of this legislation is to eliminate any thing of value being paid by the employer to a union representative in the form of a bribe. Furthermore, because of the over-

become the AFL-CIO], Phillip Murray, stated that if the Taft-Hartley Act was to become law it would bring a fascist control over men, women, and children in the United States).

9. E.g., 29 U.S.C. § 186 (1994) (suggesting this statute specifically prohibits an employer from paying a representative of the employees to receive anything of value under Section (a) and (b)).

10. E.g., 29 U.S.C. § 141 (1947); see also Arroyo v. United States, 359 U.S. 419, 426 (1959) (explaining the Congressional debates leading to the enactment of the LMRA were spearheaded by supporters of the bill who were concerned with the corruption of collective bargaining agreements through the bribery of employee representatives by their employers).

11. See 29 U.S.C. § 186 (1994) (noting the ambiguous language used in this provision such as "any money or other thing of value").

12. Compare Unite Here Local 355 v. Mulhall, 134 S. Ct. 594, 594 (2013) (acknowledging whether or not an employer violates Section 302(a)'s statutory language, specifically "a thing of value," when it promises to remain neutral in response to its union's efforts to organize its employees, that the union will be given access to areas of the employer's premises, and that the union will receive a list of employee names and contact information), with United States v. Ryan, 350 U.S. 299, 305 (1956) (asserting that Section 302 prohibits all payments between employer and a union representative unless it is categorized under the exceptions clause). But see Samuel Estreicher, Freedom of Contract and Labor Law Reform: Opening Up the Possibilities for Value-Added Unionism, 71 N.Y.U. L. REV. 827, 843 (1996) (asserting Section 302 of the LMRA was drafted overly broad so as to permit an increased freedom of contract for companies to pay the salaries of former employees who take a leave of absence in order to fulfill union roles).

13. See, e.g., Toth v. USX Corp., 883 F.2d 1297, 1305 (7th Cir. 1989) (finding that
Inclusiveness of the language used in the statute, exceptions are mentioned in Section 302(c) of the statute. Section 302(c) provides two general exceptions to the provisions listed in Section 302(a) and allows payments from an employer to an employee as compensation for, or by reason of, his or her service to their employer.  

Section 302(a) essentially makes it unlawful for employers to make payments to a union representative who represents its employees, whereas Section 302(c) makes a general prohibition inapplicable if the representative is the employee and the compensation is “for” or “by reason of” his service under his employment.  

The lack of boundaries given by the exceptions provision leaves the issue open for judicial interpretation as to what qualifies as an exception.  

The language used for the exceptions clause has led several courts to differing conclusions regarding the specific clauses of the statute. Additionally, problems arise applying Section 302 when payments do not fit squarely into one of the exceptions listed. Grey areas within the law lead to conflicting interpretations of what is covered. A main contention of the Seventh Circuit’s interpretation in Titan Tire involves the “by reason of” language and concludes that the salaries of the full-time union

the payment at issue was suggestive of a bribe of union officials in order to agree to concessions in a contract negotiation).

14. See 29 U.S.C. § 186 (1994) (stating specifically that “any money or things of value . . . payable by an employer to . . . any representative of its employees, or to any officer or employee of a labor organization, who is also an employee or former employee such employer, as compensation for, or by reason of, his service as an employee of such employer”).

15. Compare BASF Wyandotte Corp. v. Local 227, 791 F.2d 1046, 1048 (2d Cir. 1986) (holding “no-docking” provisions do not violate anti-bribery measures of the LMRA because they are “by reason of” services they may perform in the future), with Commc’ns Workers of Am. v. Bell Atl. Network Servs., Inc., 670 F. Supp. 416 (D.D.C. 1987) (recognizing the “by reason of” payments in Section 302 of the statute are fringe benefits owed to the employee because of the services they provide to their employer and must be compensated for).

16. See BASF Wyandotte Corp., 791 F.2d at 1049 (describing the boundaries of the statute are not concrete, but logic suggests what is covered and what is not covered).

17. See, e.g., Christopher J. Garofalo, Section 302 of the LMRA: Make Way for The Employer-Paid Union Representative, 75 N.Y.U.L. Rev. 775 (2000) (arguing the difficulty courts face when interpreting clauses such as “as compensation for” and “by reason of”).

18. E.g., 93 Cong. Rec. 4805 (1947) (clarifying Section 302(c)’s exemptions should be listed, but cannot be all inclusive); see also 29 U.S.C. § 186 (1994) (noting the statutory language of “by reason of” is purposefully broad so as to encompass various types of payments that are not considered compensation).

19. See Garofalo, supra note 17, at 789 (finding that both no-docking provisions and paid union leave fall into this category).
representatives are not covered under the LMRA. This decision is in
direct opposition to decisions by the Second, Third, and Ninth Circuits. This Comment argues that the Seventh Circuit’s interpretation is improper
and should be rejected by other Circuits.

C. Twenty-Seven Years of Precedent in Turmoil: Decisions Leading up to
Titan Tire

In Caterpillar, Inc. v. UAW, the Third Circuit held that anti-docking
provisions contained in the collective bargaining agreement and payments
in dispute were considered within the scope and allowable under Section
302. The court reasoned that the payments fit under the statutory
language “by reason of” their past service of the employer, which is within
the statutory language of the exceptions clause under Section 302(c).

This case is factually similar to that of Titan Tire. In Caterpillar, the
United Auto Workers and Caterpillar were both parties to a collective
bargaining agreement since 1954. From its inception until 1973, the
agreement contained a “no docking” provision that allowed employees
acting as union stewards to devote part of their day to processing union
grievances without losing any wages or benefits. Furthermore, in 1973
this provision was expanded to full-time union representatives so that they
may devote their entire workweek to union business without losing their
pay, as they were placed on leave.

20. See, e.g., Titan Tire Corp. of Freeport, Inc. v. United Steelworkers, 734 F.3d 708, 725 (7th Cir. 2013) (distinguishing the salaries of union representatives have no firm connection to their prior services provided to their employer and are thus ineligible under the “by reason of” exception of Section 302).

21 See BASF Wyandotte Corp., 791 F.2d at 1048 (allowing compensation of union representatives on leave under Section 302(c) they serve the company’s interest); see also Int'l. Ass'n. of Machinists & Aerospace Workers v. BF Goodrich Aerospace Aerostructures Grp., 387 F.3d 1046 (9th Cir. 2004) (examining the individual’s role as union steward required resolving employee grievances on behalf of the company and thus qualified him as an employee and allowed his compensation as lawful under Section 302 of LMRA).

22. 107 F.3d 1052 (3d Cir. 1997).

23. See id. at 1057 (suggesting these payments do not harm the collective bargaining process and do not violate Section 302).

24. E.g., id. (suggesting the payments were legally sound payments under the exception).

25. See id. at 1054 (explaining that the bargaining agreement had been in place for over forty years at time of this suit).

26. See id. at 1053; see also Garofalo, supra note 17, at 778 (detailing this common practice that allows employer-paid union representatives to take time off during a regular workday to conduct union business and that employee not docked for any time spent working for the union).

27. See Caterpillar, Inc., 107 F.3d at 1053 (clarifying that the representatives
A nationwide labor dispute led the workers to return to work without a labor contract. A year later, Caterpillar questioned the legality of the payments to the union representatives and consequently refused to compensate them. The company brought a lawsuit seeking declaratory judgment that payments to the representatives is a direct violation of Section 302 of the LMRA.

Analyzing the statutory language of 302(a) of the LMRA and the employee/employer relationship, the court held that the salaries of such union representatives would be unlawful on the face of the statute. However, the exceptions provision of the statute allows payments to a representative as compensation or "by reason of" his services as an employee. Therefore, the Third Circuit found the payments lawful and noted that language used in 302(c) legalizes such payments to current or former employees based on their "services" or "by reason of" their past services and not their status. Similar rulings among the circuits allowed the compensation of union representatives albeit, with different reasoning.

The Second Circuit's analysis in BASF Wyandotte Corp. v. Local 227 allowed payments to union officials who were granted four hours paid time off per day in order to conduct affairs affiliated with official union business. This case is factually similar to Caterpillar because it involves another no-docking collective bargaining agreement between an employer and union representatives.

The collective bargaining agreement between BASF and the union allowed representatives to attend meetings during their regularly scheduled working hours and allowed the compensation of the union representatives for the time spent at the meetings at their regular rate of pay. Furthermore, it permitted the union President and Secretary to conduct business from a union hall and were under no direct control of Caterpillar.

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28. See, e.g., id. at 1054.
29. See id. at 1054 (reasoning this was a unilateral decision made by Caterpillar that resulted in the union filing an unfair labor charge with the NLRB).
30. See id. at 1054–55 (assuming that payments from an employer to an employee representative are unlawful under Section 302(a) of the LMRA).
31. E.g., id. at 1055 (noting this specific term differs from the other categories of payment listed as compensation in the statute).
32. See, e.g., id. at 1055–56 (referencing the legislative intent that certain payments would be legal even though they did not involve a service).
33. 791 F.2d 1046 (2d Cir. 1986).
34. See id. at 1050 (2d Cir. 1986) (explaining "no-docking" references that workers are not docked for pay while conducting union business).
35. E.g., id. at 1047 (suggesting that "no-docking" provisions are common amongst unionized workplaces).
union business for at least four hours each day. In 1982, BASF implemented the position that Section 302 of the LMRA did not allow the compensation of the union representatives and would no longer compensate them aside from the time spent meeting with BASF management. This ultimately led to the union filing an unfair labor practices charge against BASF alleging a unilateral repudiation of the no-docking provision.

The Second Circuit affirmed the district court’s ruling that BASF was in violation of Section 302 of the LMRA, stating its employees’ wages did not present an interference with the LMRA when they took time off to conduct union business at their regular rate of pay. Furthermore, the court found Congress used the language in order to cover both wages and compensation that the employee has performed or will perform, but which is not directly for that work. The court noted that this compensation does not directly have to benefit the employer, but focuses on whether the union representative is a bona fide employee of the payor. Because fringe benefits are included in the exception of the LMRA and these benefits may directly benefit an employer; the more relevant aspect under the statute is that the person compensated by the employer is also the same individual who performs services for the employer. Thus, the court concluded that a no docking provision is, therefore, no different than fringe benefits and should be a covered form of compensation under the LMRA Section 302(c) exception provision. Other courts have reached the same conclusion.

36. See id. at 1047–48 (listing union business as meeting with management, investigating employee grievances, and preparing reports and lawsuits).

37. See, e.g., id. at 1047 (explaining the salaries were previously covered by the bargaining agreement for more than a year before management decided this compensation was in violation of Section 302 of the LMRA).

38. See id. at 1047–49 (expanding that a contractual obligation providing compensation for a union representative to take leave of up to four hours under a no-docking provision to conduct union business such as filing employee grievances is covered under the plain language used in Section 302(a) of the LMRA).

39. See, e.g., id. at 1049 (describing the latter category as fringe benefits such as vacation or sick pay).

40. Compare id. at 1050 (distinguishing the purpose behind the LMRA is to combat bribery and making sure an employee is being paid for performing work is the crux as to if payments qualify as either “by reason of” or “for compensation” the work performed), and NLRB v. BASF Wyandotte Corp., 798 F.2d 849, 858 (5th Cir. 1986) (elaborating that payments such as these are allowed under the LMRA for bona fide employees), with Garner v. Universal Machining Co., No. 01-A-01-9003-CHOO 15, 1990 WL 138985 at *6 (Sept. 26, 1990) (explaining that a bona fide employee is defined as a person employed by a contractor and subject to the contractors supervision and control with regard to time, place, and manner).

41. See BASF Wyandotte Corp., 791 F.2d at 1049 (expanding that fringe benefits do not benefit an employer, but instead benefit society and this is similar to compensating representatives for serving their constituents).

42. See, e.g., id. at 1049 (showing “by reason of” payments under Section 302(c)
allowing the compensation of union representatives under the LMRA.

The Ninth Circuit allowed compensation of full-time union representatives on leave during the investigation and prosecution of union grievances in *International Ass'n of Machinists & Aerospace Workers, Local 964 v. BF Goodrich Aerospace Aerostructures Group* ("Goodrich"). Goodrich and the union entered into a longstanding collective bargaining agreement that allowed members of the union to elect a chief steward, who drew his salary and benefits while working primarily on the investigation and prosecution of union grievances for the union members.

While on duty as the union representative, the steward volunteered for overtime maintenance work assignments on several occasions, but was always denied by Goodrich. The steward then filed a grievance alleging that Goodrich's refusal to assign him overtime hours violated the bargaining agreement. An arbitration hearing held on the matter determined that Goodrich's actions violated the agreement and required it to make the union representative whole. Goodrich then filed suit in the Central District of California to vacate the arbitration award on the grounds that it violated the LMRA.

The Ninth Circuit adopted a plain meaning approach where Section 302(a) prohibits the payments at issue and Section 302(c) establishes a number of exceptions to the rule. The court agreed with the Second...
Circuit and found the statutory language "by reason of" as a designation of alternative forms of compensation other than salaries, such as medical leave, and was specifically done so by Congress. Then the court focused on whether or not the chief steward provides a service to Goodrich. The court further elaborated that although the representative does not operate machinery like other workers, but does play a vital role in enforcing terms of the bargaining agreement and resolving disputes between laborers and management. Thus, the court concluded that the steward's role primarily involved resolving conflicts between the parties, the role required him to avoid expensive litigation and promote efficiencies of the workflow, and this role was traceable to the services he provided to Goodrich and allowed under Section 302(c) of the LMRA.

D. Titan Tire: Union Representatives Salary Not Covered Under the Section 302 Exceptions Clause

The Seventh Circuit's ruling in Titan Tire directly conflicts with the Second, Third, and Ninth Circuits' ruling allowing the compensation of full-time union representatives on leave under the exceptions clause of the LMRA. This case is factually similar to the rest of the cases analyzed in this Comment, yet the Seventh Circuit reaches an opposite conclusion. This Comment argues that the Seventh Circuit's will lead to many inconsistencies, and therefore, should be rejected by other courts.

Titan Tire Corporation ("Titan") purchased a tire manufacturing business in December 2005 and entered into a number of collective bargaining

for" as required Section 302(c) of the LMRA).

50. See Int'l Ass'n of Machinists & Aerospace Workers, 387 F.3d at 1056–57; see also United States v. Phillips, 19 F.3d 1565, 1575 (11th Cir. 1994) (suggesting that Congress prohibited two types of payments under this statute, wages and other forms of payment that are not classified as compensation).

51. E.g., Int'l Ass'n of Machinists & Aerospace Workers, 387 F.3d at 1057; see also NLRB v. J. Weingarten, Inc., 420 U.S. 251, 261–62 (1975) (insisting the roles performed by union representatives serve employers interests more often than not).

52. See Int'l Ass'n of Machinists & Aerospace Workers, 387 F.3d at 1057–58 (establishing that union representatives working under a bargaining agreement provide a number services that are both beneficial to the unionized employees as well as the company).

53. 734 F.3d 708 (7th Cir. 2013).

54. See, e.g., id. 711–12 (examining other courts have allowed union representatives' compensation under Section 302 of the LMRA, but when the payment becomes inconsistent with their previous salary that is does not qualify); see also Toth v. USX Corp., 883 F.2d 1297, 1305 (7th Cir. 1989) (accepting that compensation that is disproportionate with the union representatives' previous pay is unlawful under the LMRA).

55. See Titan Tire Corp., 734 F.3d at 720 (concluding payments such as these violated Section 302 of the LMRA).
agreements with Local 745, which was responsible for representing employees of Titan.\(^{56}\) Initially, Titan paid the salaries of both the President and Benefit Representative who were on leave from the Titan facility and worked at other locations on union matters.\(^{57}\) Almost three years later, Titan informed the union that it would no longer be paying the representatives as it was in direct violation of Section 302 of the LMRA because the union representatives within Local 745 represented both the workers at the Titan facility and a local school district.\(^{58}\) Furthermore, the salaries of the union representatives were illegal because the President and Benefits Representative were not working full-time at the Titan center and were not under Titan’s control.\(^{59}\)

The union filed a grievance against Titan, arguing that Titan was in violation of its various labor agreements and the payments to the union representative were lawful under Section 302(c) of the LMRA “by reason of” their service provided to the employees of Titan as union representatives as well as former employees of the company..\(^{60}\) An arbitrator agreed and found that Titan made the salary payments “by reason of” their former employment with Titan and ordered the employer to resume payment of the representative’s full-time salaries.\(^{61}\) Titan filed suit in federal district court to vacate the arbitrator’s award and the union counterclaimed for the enforcement of the award.\(^{62}\)

\(^{56}\) See, e.g., id. at 710.

\(^{57}\) E.g., id. at 715 (elaborating the president of the union would physically work out of the Titan plant on union business for a total of four hours a week and the other representative covered the remaining three days of shifts at the Titan facility).

\(^{58}\) See id. at 710–11 (emphasizing Titan was not solely responsible to pay the salaries if these individuals were responsible for filing grievances on behalf of other employers).

\(^{59}\) Compare id. at 710–11 (noting that Titan was not responsible for these payments as they were not full-time employees and not under Titan’s control), with Trailways Lines, Inc., v. Trailways Inc., 785 F.2d 101, 106 (3d Cir. 1986) (detailing Section 302(c)(5) does not allow compensation to former employees while on leave because they are former employees and not under the employer’s control). But see Int’l Ass’n of Machinists & Aero. Workers v. BF Goodrich Aerospace Aerostructures Grp., 387 F.3d 1046, 1059 (9th Cir. 2004) (rationalizing the law of agency determines who qualifies as an employee and a number of factors such as location of the work and duration of the relationship can determine this).

\(^{60}\) E.g., Titan Tire Corp., 734 F.3d at 713; see also 29 U.S.C. § 186(c)(1)-(2) (1994) (stating that this exception allows any money or thing of value payable by an employer to a representative of his employee or any officer of an labor organization that is a former employee of such an employer).

\(^{61}\) See Titan Tire Corp., 734 F.3d at 711 (announcing that Titan violated their collective bargaining agreement when it stopped paying the salaries the men were entitled to as former Titan employees and the payments did not violate the LMRA because these payments fit under the “by reason of” the services they provided).

\(^{62}\) Compare Prate Installations, Inc. v. Chi. Reg’l. Council of Carpenters, 607
granted the union’s motion enforcing the arbitrator’s decision and allowing compensation of the union representatives, which Titan appealed to the Seventh Circuit.\textsuperscript{63}

The Seventh Circuit overturned the arbitrator’s award holding this interpretation of the collective bargaining agreement violated public policy, and therefore, should not be implemented.\textsuperscript{64} It reasoned that an interpretation is in direct violation of public policy if it goes against a statute or other positively treated law and an arbitrator lacks the authority to violate a positive law.\textsuperscript{65} The majority then addressed the union’s argument that the union representatives’ salaries are within the limits of the “by reason of” exception of 302(c) and thus, supported by \textit{Caterpillar}.\textsuperscript{66}

Looking toward the plain meaning of the statute, the Seventh Circuit’s majority found that “by reason of” recognizes that both current and former employees have a right to receive payments from their employers when they provide a service for their employer; yet this payment is not classified as compensation but rather as a fringe benefit such as pensions, life insurance, or jury duty.\textsuperscript{67} The main focus of this analysis requires that

\textsuperscript{63} See Titan Tire Corp., 734 F.3d at 711 (articulating any payments to the President or Benefits Representative of the union were exempt from the general provision of the Labor Management Relations Act).

\textsuperscript{64} See id. at 712; see also W.R. Grace & Co., 461 U.S. at 764 (stating a federal court may only overrule an arbitrator’s decision which does not comport with the collective bargaining agreement).

\textsuperscript{65} E.g., \textit{Titan Tire Corp.}, 734 F.3d at 716–17 (7th Cir. 2013) (emphasizing the clearest form of public policy involves an apparent violation of a statute or law (citing EEOC v. Ind. Bell Tel. Co., 256 F.3d 516 (7th Cir. 2001))).

\textsuperscript{66} See id. at 719; see also Caterpillar, Inc. v. UAW, 107 F.3d 1052, 1054 (3d Cir. 1997) (explaining a union grievance chairman could not be compensated under Section 302(a)’s general prohibitions, but based on Section 302(c)’s exceptions clause would allow compensation by the reason of the services they provide to their employer such as filing grievances).

\textsuperscript{67} See Titan Tire Corp., 734 F.3d at 720–21 (discussing that paying a former employee a salary to do a completely separate job is completely different). But see United States v. Phillips, 19 F.3d 1565, 1575 (11th Cir. 1994) (suggesting fringe benefits such as sick and vacation pay are allowed under the “by reason of” language); BASF Wyandotte Corp. v. Local 227, 791 F.2d 1046, 1049 (2d Cir. 1986) (concluding that “by reason of” payments include paid leave for jury duty or military leave and other similar forms of leave).
these payments come from the service that the employee performs.\textsuperscript{68} Furthermore, the plain meaning of the language “by reason of” is similar to “because of,” thus when an employee provides a service for his employer, he is entitled to compensation or payment because of the service performed for the employer.\textsuperscript{69}

Using this line of analysis, the majority held that the salaries of the union representatives did not fit within the bounds of Section 302(c) and its statutory language because the representatives were former employees of Titan and provided a service to both the school district and Titan employees.\textsuperscript{70} This meant that Titan did not receive a direct benefit from the representatives due to the splitting of delegations between the two organizations. Therefore, Titan was not required to compensate them for the services provided as the representatives were not under Titan’s control, nor did Titan technically employ them.\textsuperscript{71} Furthermore, the annual salary of the President of the union was $80,000 and the Benefit Representative was paid $50,000 annually. Thus they would not qualify as payments “by reason of” their former employment at Titan because the respective salaries paid to these individuals were so incommensurate with their previous salary and would not qualify under the collective bargaining agreement or Section 302(c) of the LMRA as evidenced in Toth v. USX Corp.\textsuperscript{72} Under the Seventh Circuit’s analysis, compensation of full-time union representatives does not qualify under Section 302(c) of the LMRA if the services provided do not exclusively benefit the employer and the payment “by reason of” the representative’s service is incommensurate with his previous wages.\textsuperscript{73}

\textsuperscript{68} See Titan Tire Corp., 734 F.3d at 711 (explaining the services provided by the union representatives is more applicable to the union rather than services provided to Titan’s employees).

\textsuperscript{69} E.g., id. at 720–21 (recognizing the union representatives receive their salaries because of the services they provide to the union, which includes both Titan employees and members of the local school district and thus makes their salaries compensation unlawful under Section 302).

\textsuperscript{70} See id. at 715 (insisting the union representatives have limited hours when they work within the Titan facility).

\textsuperscript{71} See, e.g., id. at 729 (arguing the representatives may have been assisting individuals with retirement and health insurance benefits as well as aiding individuals laid off in obtaining unemployment benefits, but they were also benefitting workers from the school district and thus were ineligible for compensation from Titan).

\textsuperscript{72} See Toth v. USX Corp., 883 F.2d 1297, 1305 (7th Cir. 1989) (extrapolating a collective bargaining agreement can be agreed upon by both sides, but also be void against public policy based upon the agreed upon terms).

\textsuperscript{73} E.g., Titan Tire Corp., 734 F.3d at 712 (concluding that the union representatives’ compensation is “by reason of” their service to the union, which includes both Titan employees as well as employees of the local school district).
II. *TITAN TIRE GIVES RISE TO A HYPOTHETICAL SCENARIO THAT COULD ALLOW COMPENSATION OF UNION REPRESENTATIVES UNDER THE LMRA*

This Comment now shifts toward a hypothetical scenario involving a company that is unionized and allows an employee to take a leave of absence in order to fulfill a full-time union representative position for the company. One approach will allow compensation of the union representative and the other will not. In light of this hypothetical analysis, this Comment discusses the benefits and disadvantages of the opposing interpretations of the scenario.

*A. Testing the Boundaries: A Hypothetical Approach to Section 302 of the LMRA*

This Comment argues that the Seventh Circuit’s conclusion is inconsistent with prior decisions regarding the compensation of on-leave union representatives, which previously have been within the limits of Section 302(c) of the LMRA. This decision does not fit within the scope of the statute. If Congress intended to differentiate which forms of payments are excluded from Section 302(a) in the exceptions clause, it would have explicitly done so. As noted in Justice Woods’ dissent, the law must be applied as written. Moreover, there is a standard of review that must be followed with regard to an arbitrator’s award that was

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74. See id. at 731 (Wood, J., dissenting) (asserting that the majority attempts to distinguish salary from other fringe benefits, but the statutory language makes no distinction); see also 29 U.S.C. § 186 (1994) (saying the only language similar to this differentiation is the language “thing of value”). But see Caterpillar, Inc. v. UAW, 107 F.3d 1052, 1054 (3d Cir. 1997) (explaining when an employer is in an industry that affects commerce and the union members are representatives for their employees, payment to these representatives is unlawful on the face of the statute, but if the representatives receive compensation “by reason of their service as employees” then the payments are allowable under Section 302 of the LMRA).

75. Compare Titan Tire Corp., 734 F.3d at 731 (Wood, J., dissenting) (arguing specifically that the union members were employees of Titan and were receiving money from Titan in the form of salaries and fringe benefits that were by reason of their services as former employees, yet the majority does not see these fringe benefits as “something of value” as required under Section 302 of the LMRA), and 29 U.S.C. § 186(c) (1994) (reviewing the exceptions listed within the statute deal with employer-paid payments, employer-backed trust funds, payments to satisfy judgments, payments of union dues, payments to labor management committees, and payments involving the sale of goods and services at the market price), with 93 Cong. Rec. 4678 (1947) (arguing the only form of payments that were expressly outlawed by the legislature involved payments from an employer to an employee that were used to coerce or bribe the employee, yet the exceptions to the statute were drafted broadly).

76. See, e.g., Titan Tire Corp., 734 F.3d at 730 (Wood, J., dissenting) (eluding to the fact that Congress expressly included the exceptions clause of Section 302 to take other payments into consideration).
disregarded by the majority in their decision in *Titan Tire*. The majority’s disapproval of the arbitrator’s award is cloaked behind an analysis that finds that arbitrators cannot legally order the parties to commit an illegal act. There is still much debate about whether the salaries of full-time union representatives are lawful under the LMRA and have left employers to review any arrangements due to the fact that *Titan Tire* is considering controlling law in some jurisdictions.

Next, this Comment introduces a hypothetical scenario with two possible approaches with regard to the compensation of on-leave union representatives. One analysis will allow the union representative’s compensation as lawful under the LMRA and the other analysis considers the payment unlawful under the statute. The consequences of each interpretation is analyzed with regard to the effect that is placed on both employers and employees.

While the cases analyzed in this Comment do have similar fact patterns, each individual case seems to come to a different outcome with varying analyses. There are a number of basic conditions that must be included,

77. Compare id. at 731 (explaining that the majority’s decision is improper and the case should be set aside before an en banc court), and Oxford Health Plans LLC v. Sutter, 133 S. Ct. 2064, 2068 (2013) (arguing that an arbitral award must be upheld even if a court is in disagreement with the outcome), with Brentwood Med. Assocs. v. United Mine Workers of Am., 396 F.3d 237, 243 (3d Cir. 1989) (explaining that the task of an arbitrator is to interpret the issue at hand and to enforce a contract. When he makes a good faith attempt to do so, even serious errors or omissions of law or specific facts will not subject his award to being vacated).

78. Compare EEOC v. Ind. Bell Tel. Co., 256 F.3d 516, 524 (7th Cir. 2001) (en banc) (embracing that an arbitrator cannot bind the parties to a decision that is in direct violation with a positively treated law), and Stolt-Nielsen v. AnimalFeeds Int’l Corp., 559 U.S. 662, 671 (2010) (concluding a court cannot overrule an arbitral award even if the court feels the arbitrator has made an improper interpretation of the law), with 9 U.S.C. § 10 (2012) (explaining that Section 10(a)(4) of the Federal Arbitration Act states that, “[T]he United States court in and for the district wherein the award was made may make an order vacating the award upon application of any party to the arbitration ... where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made”).

79. See Courtney Kleshinski, *Employer Payment of Union Officials’ Salaries Held Unlawful*, LAELLE LAW, LTD. (Dec. 16, 2013), http://lavellelaw.com/employment/employer-payment-of-union-officials-salaries-held-unlawful (clarifying an appeal could change Titan’s current control over the law, but until then, states within the Seventh Circuit’s jurisdiction such as Illinois, Indiana, and Wisconsin could be affected by this decision).

80. Compare Caterpillar, Inc. v. UAW, 107 F.3d 1052, 1053 (3d Cir. 1997) (allowing union representatives to take part time leave and to receive compensation under the LMRA), and Int’l. Ass’n of Machinists & Aerospace Workers v. BF Goodrich Aerospace Aerostructures Grp., 387 F.3d 1046 (9th Cir. 2004) (allowing compensation to a union representative because the duties he serves provide a direct benefit to his former employer). But see *Titan Tire Corp.*, 734 F.3d at 708 (denying
which could give rise to a claim between the union and the employer and includes: (1) some form of collective bargaining agreement between the two parties that dictate the roles and scope of the relationship between the employer (or management) and the union,^{81} (2) the employer must initially compensate the union representative,^{82} and (3) some form of causation where the employer ultimately refuses to pay the union representative for the services they have performed.^{83} When these three elements are fulfilled, the union representative will be allowed to file a grievance with the union under Section 302 of the LMRA.

Consider the following hypothetical situation that could lead to a claim brought by a union against an employer refusing to pay the salaries of on-leave full-time union representatives as it is in direct violation of Section 302 of the LMRA: On December 20, 2010 Smith Corporation, a manufacturer of widgets and cogs, purchased a manufacturing plant in Middleburg, Michigan. In January 2011, Smith Corp. entered into a series of labor agreements with Local 113, a union that represented the Smith Corp. workers. The agreements between Smith Corp and the union consisted of a collective bargaining agreement between the two parties. Originally, the bargaining agreement between the two parties contained a “no-docking” agreement allowing the employees who were union stewards to work a portion of their workday on processing employee union grievances without losing pay, benefits, or full-time status.^{84} The other half

81. See, e.g., Caterpillar, Inc., 107 F.3d at 1053 (reasoning that a collective bargaining agreement had been in place for nearly twenty years without conflict); see also Collective Bargaining, AFL-CIO, http://www.aflcio.org/Learn-About-Unions/Collective-Bargaining (last visited Feb. 22, 2015) (demonstrating the collective bargaining process involves working people acting through their unions as a means to negotiate labor contracts with the employers in order to determine specific conditions of their employment such as pay, benefits, hours, leave, fringe benefits, as well as developing a work-life balance).

82. See, e.g., Titan Tire Corp., 734 F.3d 708, 710 (7th Cir 2013) (extrapolating Titan Tire purchased the tire manufacturing facility in 2005, entered into labor agreements with Local 745 the following year, and then proceeded to pay the union representation for three consecutive years before refusing to pay the salaries of the representatives).

83. See, e.g., BASF Wyandotte Corp. v. Local 227, 791 F.2d 1046, 1047 (2d Cir. 1986) (observing the union in question was the sole collective bargaining representative from the mid 1940’s until 1982 when the company refused to compensate union members while on leave); see also Toth v. USX Corp., 883 F.2d 1297, 1298–99 (7th Cir 1989) (permitting USX employees to accrue pension-benefits rights while they were on a leave of absence from active employment for years prior to making changes to the policy in 1984 stating that such policies were in violation of the LMRA).

84. See Caterpillar, Inc., 107 F.3d at 1053 (establishing that no-docking
of their day was devoted to normal manufacturing work. This arrangement was successful for the parties for a number of years.

In April 2013, the bargaining agreement was expanded to allow the union’s president, a full-time employee, to devote his or her entire workday to union business without pay or full-time employment status by Smith Corp.85 The union representative, who is elected by a majority of the union members, receives a pay increase of $10,000 for his services and is placed on a leave of absence during his one-year commitment to the union. Furthermore, the president also represents a local bargaining unit of firefighters in the district. While working as the union president the representative conducts only union business, performs no manufacturing duties for Smith Corp., and is not under control of Smith Corp. The president spends four days per week at the Smith Corp. office and one day per week at the Middleburg Fire Station to address union grievances.86

Things went smoothly for several months, but in December 2013, Smith Corp. informed the union that it would no longer pay the salaries of the full-time union representatives. Smith Corp. claimed it was in direct violation of the LMRA because the union president did not solely represent Smith Corp’s workers and claimed the union president did not work full-time at the Smith Corp. facility.87

In the above scenario, the three required elements are met. The collective bargaining agreement between Smith Corp. and Local 113 governs the scope and representation of the two parties. The agreement is violated when Smith Corp. refuses to compensate the full-time union

provisions such as this are a typical provision of collective bargaining agreements in unionized workplaces); see also Phillip Landau, Can an Employer Dock My Pay?, THE GUARDIAN WORK BLOG (Aug. 10, 2013), http://www.theguardian.com/money/workblog/2012/aug/10/can-employer-dock-pay (discussing that wages can be deducted when employees arrive late, for instance, but no extra penalties or deductions should be made to an employee unless there are specific provisions for any deductions in one’s employment contract or else the additional docking of pay would amount to unlawful deductions protected against under the Employment Rights Act of 1996).

85. E.g., Caterpillar, Inc., 107 F.3d at 1053 (repeating the workers on leave are not docked for the work they are missing while conducting union business); see also Gilbert E. Dwyer, Employer-Paid “Union Time” Under the Federal Labor Laws, 12 LAB. L.J. 236, 236 (1961) (extrapolating the results of a survey of collective bargaining agreements showing it has been a common practice for decades for employers to allow former employees fulfill roles of union representatives by gradually performing less work and spending more and more times on filing union grievances).

86. See, e.g., Titan Tire Corp., 734 F.3d at 715 (acknowledging that the union representative spends hours at multiple work sites in order to file grievances for employees from both workplaces).

87. E.g., id. at 710 (implying the union representative receives a full-time salary because of the work he provides for representing the union, but not from his previous employment at Smith Corporation).
president and gives rise to a grievance on behalf of the union. Using facts from this scenario, this Comment will now apply two different tests. One will allow compensation of the union president and the other will be similar to that of the Seventh Circuit's ruling in *Titan Tire*.

B. Under a Caterpillar Analysis, a Full-time Union Representative's Compensation is Allowable Under Section 302(c) of the LMRA

Section 302(c) of the LMRA allows payments when union members receive compensation "by reason of" their current or former services provided as employees. The compensation of the union president should be allowed under Section 302 because Smith Corp is receiving a benefit from the union representative's service. Furthermore, "no-docking" provisions are lawful under the LMRA and it is beneficial for the corporation to have a union representative in the long-term.

The union president, while on leave, is still an employee of Smith Corp. He is providing a service to Smith Corp, which provides the company with a benefit, and thus, he should be compensated for the services provided. This is a requirement under the collective bargaining agreement between both Smith Corp. and its union representatives. Additionally, the president was being compensated for his role and services provided to Smith Corp., hence why it continued to pay him while he assumed the role and filed union grievances on behalf of Smith Corp. workers. This analysis aligns with the Third Circuit's rejection of its prior precedent in *Trailways Lines, Inc. v. Trailways, Inc., Joint Council of Amalgamated Transit Union*, which stated that the Section 302(c)

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88. See *Caterpillar, Inc.*, 107 F.3d at 1054 (maintaining payments for services "by reason of" ones former employment are allowed under Section 302 the LMRA); see also *BASF Wyandotte Corp.*, 791 F.2d at 1046-47 (holding that a collective bargaining agreement allowing chemical workers time off with pay for the purpose of conducting business related to union matters other than direct meetings with management are allowable under Section 302(c) of the LMRA).

89. *E.g.*, BERTRAM R. CRANE & ROGER M. HOFFMAN, SUCCESSFUL HANDLING OF LABOR GRIEVANCES 3–5 (1956) (arguing when management allowing union representatives to take a leave of absence for either a part of the day or on a full time basis to conduct union grievances for fellow employees, the employer will mutually receive benefits such as harmonious relations between employees and efficiencies in workplace productions).

90. See, *e.g.*, *id.* at 110–14 (1956) (examining typical clauses used when drafting a provision for compensation to union representatives for filing grievances on during the regular workday).

91. See *Caterpillar, Inc.*, 107 F.3d at 1054 (observing Section 302 of the LMRA says union officials are representatives under terms of their employment).

92. 785 F.2d 101 (3d Cir. 1986).
exception does not apply to union representatives who are not under direct control of their employer and goes against the legislative intent of the statute. \(^9^3\) Section 302 of the LMRA does not designate or differentiate the status of employees when it discusses the legality of payments to current or former employees, but instead focuses on the services provided by employees. \(^9^4\) The union is representing Smith Corp. workers on union grievances, meeting with management to facilitate discussions between the two parties, and filling out grievance paperwork. All of these actions directly benefitted Smith Corp and its employees. \(^9^5\)

Collective bargaining agreements, like the one between Smith Corp. and Local 113 will almost exclusively contain "no docking" provisions or allow a full-time union representative to take leave to represent aggrieved workers on behalf of the employer. \(^9^6\) The initial collective bargaining agreement between Smith Corp. and its employees contained a no-docking provision, which was later amended to allow the president to work full-time while conducting the union’s business. \(^9^7\) Agreements between parties are not entered into without full consideration by both sides. Therefore, it seems likely that the two sides would have discussed all of the terms and conditions of the agreement when it made the amendment in April 2013, including any clauses discussing leaves of absences and compensation. \(^9^8\) Given the fact that Smith Corp. agreed to allow the president to work full-time as a union representative and receive compensation for these services, it seems unethical and unfair to allow Smith Corp. to back out of their side of the bargain. Additionally, no-docking provisions and paid union leave provisions have been historically covered under Section 302 of the

\(^9^3\) See id. at 106–07 (3d Cir. 1986) (reasoning that employers who lack control but receive a benefit from the representative must compensate the union representative).

\(^9^4\) See Caterpillar, Inc., 107 F.3d at 1055 (declaring these men provide services such as handling grievances and other labor matters).

\(^9^5\) E.g., BASF Wyandotte Corp. v. Local 227, 791 F.2d 1046, 1047 (2d Cir. 1986) (emphasizing that no-docking provisions allow representatives of the union to attend meetings and conduct union business during scheduled working hours).


\(^9^7\) E.g., Titan Tire Corp. of Freeport v. United Steelworkers, 734 F.3d 708, 718 (7th Cir. 2013) (assessing the trend that many unionized workplaces started with a no-docking provision and then slowly progressed into allowing union representatives to take a leave of absence in order to fulfill employee grievances on a full-time basis).

\(^9^8\) See Colosi & Berkeley, supra note 7, at 1 (defining collective bargaining as a process that affords the parties the opportunity to exchange promises and commitments in order to reach agreement).
Provisions such as these are beneficial to both management and to union representatives and are a vital part of the collective bargaining agreement between the parties.

Finally, it is beneficial for management to have a liaison between the aggrieved worker and itself, which is the president's role in this hypothetical. Union representatives are involved in the initial steps of filing a complaint, all the way through resolution of grievances, and contract negotiations. Having one individual taking part throughout the entire process will not only ease the grieving worker, but also may bring a resolution quicker than if only management was involved in a dispute with an employee. Union representatives will disseminate valuable information and guidance, and will be a vast resource for the workers. Furthermore, management will save money in the long run by resolving the


100. Compare Crane & Hoffman, supra note 89, at 92 (arguing that management learns of the concerns of their employees and allows union representatives to advocate for their client), with Teresa J. Tsuchida, Unions and Management: A Blissful Marriage?, GALLUP BUS. J. (Mar. 9, 2006), http://businessjournal.gallup.com/content/21727/unions-management-blissful-marriage.aspx#1 (when management and union members work together the partnership that develops between the groups improve the environment of the workplace and allows both sides to feel as if they have “won.”), and Allyne Beach & Linda Kaboolian, Working for Am. Inst., Working Together: A Practical Guide for Union Leaders, Elected Officials, and Managers to Improve Public Services 5 (2005), available at http://www.law.harvard.edu/programs/lwp/Working%20Better%20Together.pdf (articulating that when union representatives and management work together in a collaborative way they will yield important results and will lead to more creative and empowered work forces as well as higher quality and efficiency).

101. See Garofalo, supra note 17 at 778–79 (expanding how the employee acting as a union representative acquires knowledge of workers’ concerns and problems which is beneficial to both parties involved, including the employer).

102. E.g., Garofalo, supra note 17 at 780–81 (expanding on the idea that union representatives are one of the main sources in which employees receive information regarding labor rights and other union affairs); see also The Steward’s Role, The PROF. INST. OF THE PUB. SERV. OF CAN., http://www.pipsc.ca/portal/page/portal/website/slc/sdev/role (last visited Feb. 22, 2015) (indicating the role of union grievance representatives is to facilitate communication of policies, advise employees of their rights under bargaining agreements, and attend consultation meetings with management to promote healthy relationships between the parties involved in labor disputes).

103. See, e.g., Herman Erickson, The Steward’s Role in the Union and a History of American Unions 82 (1971) (highlighting that workers look to the representatives for information and direction).

104. See Garofalo, supra note 17, at 781 (noting union representatives use their knowledge and past experience with workers and management to help resolve grievances); see also Crane and Hoffman, supra note 89, at 225 (explaining that one of the main roles of the union representative is to file grievances on behalf of the employees its represents, which includes determining the legitimacy of an employee’s claims).
issues earlier and avoiding litigation.\textsuperscript{105} It is also an industry standard of many organizations involved in settlement negotiations that all members of management receive additional compensation in order to acknowledge their contribution to the success.\textsuperscript{106} If the industry standard allows additional compensation for management based on the efficiency of negotiated union settlements, it seems unethical to deny compensation to a union representative for bringing about a quick settlement.\textsuperscript{107} Thus, the union president should be recognized as both an advocate for his client and an effective negotiator with management.\textsuperscript{108} These dual roles will ultimately save Smith Corp. from litigation, will provide a service and a benefit to the company, and should prompt compensation from Smith Corp. for the beneficial services provided by the union representative.\textsuperscript{109}

C. Under a Titan Tire Analysis, a Full-time Union Representative's Compensation is Unlawful Under Section 302(c) of the LMRA

Congress enacted Section 302 of the LMRA in order to prevent bribes and conflicts of interest in the workplace.\textsuperscript{110} This statute allows payments "by reason of" services provided to one's employer under Section 302's exceptions provision, but does not allow compensation when an individual: (1) represents more than one group of employees, (2) does not work out of the employer's main place of business, and (3) is not under direct control of the employer on a daily basis.\textsuperscript{111} Thus, using the same logic as the Seventh

\textsuperscript{105} See, e.g., Terry L. Leap, Collective Bargaining and Labor Relations 200 (2d ed. 1995) (observing most grievances can be quickly resolved through conversations between union members and a member of management thus preventing drawn out disputes).

\textsuperscript{106} See CoIosi & Berkeley, supra note 7, at 8 (establishing how this common practice will serve as an incentive to settle disputes between the parties).

\textsuperscript{107} See Crane and Hoffman, supra note 89, at 223–25; see also Walt Baer, Labor Union Representatives: Allowed and Prohibited Practices, 43 (1992) (discussing the underlying purpose of grievance procedures is for a prompt and expeditious resolution between the parties).

\textsuperscript{108} See Garofalo, supra note 17, at 780 (reasoning that union representatives fill the vital role of investigating an employee's claim and attempting to produce an informal resolution to the problem by bringing it to management).

\textsuperscript{109} See Garofalo, supra note 17, at 779–80 (explaining that allowing a former employee to fill the role of union representative benefits both the other employees by fulfilling their grievances and represents an efficient means to settle disputes for his employer).

\textsuperscript{110} See, e.g., Garofalo, supra note 17, at 789. (listing specific examples that are prohibited by the statute); see also Arroyo v. United States, 359 U.S. 419 (1959) (articulating the primary concerns that led Congress to enact the LMRA was corruption within workplace collective bargaining agreements involving both the bribery of employees by management as well as the abuse of union funds by union officials).

\textsuperscript{111} E.g., Titan Tire Corp. of Freeport v. United Steelworkers, 734 F.3d 708, 712 (7th Cir. 2013) (announcing a discrepancy that an employee cannot be compensated
Circuit's majority, the union representatives would not be compensated under the LMRA because the union representatives represent both the local Fire Department and the Smith Corp. employees. In addition, they do not work on Smith Corp.'s property on a full-time basis and are not under the direct control of Smith Corp. on a full-time basis, which means they cannot be lawfully paid under Section 302 of the LMRA.  

Applying a plain meaning approach to Section 302(c)'s statutory language, "by reason of" simply recognizes that both current and former employees have a right to payment from their employers arising from services performed, as they have a right to obtain what is rightfully theirs. Furthermore, this language stresses that the union representative is not entitled to receive payments because of the services provided, but rather the payment should be made in spite of the services they perform as an acting union representative. Therefore, under this line of analysis, payments made "by reason of" a union president's service do not apply to Section 302 of the LMRA because the payments relate to the services provided to the union, which is comprised of both Smith Corp. employees and local fire fighters.

Relying on the hypothetical scenario above, the union president is an acting member of the union that represents Local 113, which is comprised of both Smith Corp. workers and local fire fighters. Because the services provided by the president directly benefit the union, as his position requires meeting with workers and filing union grievances, Smith Corp. should not be compensating this individual because they are not receiving any benefit from this work. Additionally, the union president is on leave while performing these duties and is not a current employee of Smith Corp. As

under Section 302 of the LMRA when the represent more than one company's employees and work out of multiple locations on a regular basis).

112. E.g., id. at 713 (commenting on the limited hours the union representatives were available to Titan employees at their workplace).

113. See id. at 720 (citing to the dissent in Caterpillar, Inc., 107 F.3d 1052, 1058 (3d Cir. 1997) (Mansmann, J., dissenting)) (articulating the Section 302 exception relies on the notion that an employee should receive what is rightfully theirs).

114. See id. (alluding to the notion that the union representatives compensation should come from the person they represent and not the organization that formerly employed them).

115. Id. at 720 (suggesting the salaries of the union representatives do not fall under Section 302's exception because the union workers salaries are not "by reason of" their service as former employees of Titan, but rather are because of their services provided to union members from both Titan and the local school district).

116. See id. at 711 (noting a factual similarity between union president representing two different groups).

117. See, e.g., id. at 725 (thinking there is no connection between the previous employment and this).
such, paying a former employee a salary to perform a job for another organization is not a requirement under the LMRA.\textsuperscript{118}

In addition to the lack of benefit received by Smith Corp for the services the union representative performs, the rate of pay includes a pay increase of $10,000 while the president assumes his union duties.\textsuperscript{119} Under Section 302 of the LMRA, salaries of the full-time representatives are illegal if the terms of compensation are disproportionate with the former employee’s previous rate of pay.\textsuperscript{120} Both the statutory provisions of the LMRA and collective bargaining agreements require that payments between an employer and a union representative are lawful and uncoercive.\textsuperscript{121} Furthermore, there must be a “firm connection” between the bargained-for term as well as the prior terms of employment within the bargaining agreement.\textsuperscript{122} Consequently, a bargaining agreement deal between an employer and the union may be in direct violation of Section 302 of the LMRA, and therefore, illegal if the payment terms were found to be disproportionate with the employee’s previous terms of employment.\textsuperscript{123}

\textbf{D. Unions Beware: Titan Tire’s Ripple Effect to Unions Throughout the United States.}

If adopted by the Supreme Court, the Seventh Circuit’s narrow interpretation of Section 302(c)’s exceptions clause could drastically affect union representatives across the nation. This interpretation is controlling in several jurisdictions and does not allow the compensation of full-time union representatives who take a leave of absence in order to fill roles of union representatives.\textsuperscript{124} There are a number of implications that this

\begin{itemize}
\item \textsuperscript{118} E.g., id. at 722. (reasoning this is different from paying fringe benefits to a former employee).
\item \textsuperscript{119} See id. at 723 (noting a factual similarity of pay increase of union president).
\item \textsuperscript{120} E.g., Toth v. USX Corp., 883 F.2d 1297, 1305 (7th Cir. 1989) (finding that these payments cannot be “by reason of” payments because of their disproportional nature to their previous rate of pay).
\item \textsuperscript{121} See, e.g., id. at 1301 (emphasizing payments that are “by reason of” ones employment could qualify under Section 302’s exception clause so long as there is no coercive intent behind the compensation).
\item \textsuperscript{122} See, e.g., id. at 1305 (rationalizing these payments skirt a fine line and could easily become unlawful depending on the reason for which one is paid).
\item \textsuperscript{123} See id. at 1305 (suggesting when a union representative receives compensation that is incomparable with their previous pay rate, this may be found unlawful under Section 302 because it violates the bargaining agreement).
\item \textsuperscript{124} See, e.g., John F. Ring, Employer Payment of Union Officials’ Salaries Deemed Unlawful, MORGAN LEWIS (Nov. 11, 2013) http://www.morganlewis.com/ pubs/LEPG_LF_EmployerPaymentofUnionOfficialSalariesUnlawful_11nov13 (observing the case at hand is controlling law in some jurisdictions and persuasive in others).
\end{itemize}
decision has created including an increased enforcement of other labor law provisions for improper behavior involving payments by management to union representation.\textsuperscript{125}

Unionized workplaces within the Third Circuit could be placed in the dilemma as to which standard to apply.\textsuperscript{126} By adopting \textit{Titan Tire}, Management could argue that any form of payment to union representatives is unlawful under Section 302(c).\textsuperscript{127} Conversely, unions would argue that the Third Circuit's decision in \textit{Caterpillar} should control, which allows such payments to union representatives under the LMRA.\textsuperscript{128} Furthermore, employers with active will be forced to review any collective bargaining agreements or any other labor forms to assess whether any current practices are lawful under the Seventh Circuit's interpretation of the LMRA.\textsuperscript{129} Employers that have potentially unlawful workplace agreements may consider this interpretation as a basis for refusing to make additional payments to union representatives.\textsuperscript{130} In the future, employers could refuse to compensate employees who are acting as full-time union representatives for fear of violating the law.\textsuperscript{131} This effect could ripple out to the unions themselves, who would then be forced to find alternative ways to compensate displaced unionized employees when management pulls the

\textsuperscript{125} See \textit{id.} (examining recent attention given to the Labor-Management Reporting and Disclosure Act of 1959 involving "persuading" activity in these payments).

\textsuperscript{126} See \textit{id.} (observing the Seventh Circuit's opinion to outlaw the payments was the first of its kind and has the ability to affect mature collective bargaining agreements between employers and unionized employees in the workplace).

\textsuperscript{127} E.g., \textit{Titan Tire Corp. of Freeport v. United Steelworkers}, 734 F.3d 708, 710 (7th Cir. 2013) (voicing that employees who take leaves of absence to work for an union will not be paid salaries because these forms of payments are unlawful under Section 302 of the LMRA).

\textsuperscript{128} See, e.g., \textit{Caterpillar, Inc. v. UAW}, 107 F.3d 1052, 1057 (3d Cir. 1997) (concluding this decision allowed an employee to take a leave of absence in order to fulfill his or her duties as a union representative and still receive a salary under Section 302 of the LMRA).

\textsuperscript{129} E.g., \textit{LMRA Bars Employer from Paying Salaries to Non-working Union Officials: Seventh Circuit}, PRAC. L. (Nov. 14, 2013), http://us.practicallaw.com/0-548-2545?q=&qp=&qo=&qe= (voicing that unionized workplaces with past practices allowing these types of payments could follow the analysis used in Titan Tire to prohibit employers from making any additional compensation to union members on leave in accordance with the law).

\textsuperscript{130} See Ring, \textit{supra} note 124 (discussing that any bargaining agreements or contractual obligations will no longer be honored based on the Seventh Circuit's decision in Titan Tire).

\textsuperscript{131} See Brenda J. Linert, \textit{Labor's Pain: Union Numbers Decline, but Many Say Their Role is Still Vital}, TRIB. CHRON, (Jan 26, 2014), http://www.tribtoday.com/page/content.detail/id/598636/Labor-s-pain.html?nav=5021 (examining a trend that fewer unions exist due to anti-union campaigning by companies who refuse to pay them).
plug on their wages. This Comment argues that businesses receive a benefit from the services of the union representatives and thus should be legally required to pay for their salaries. Therefore, the Seventh Circuit’s decision has a ripple effect that could severely harm union organizations across the nation, as they would have to either compensate the union representatives or come up with an alternative solution, such as voluntary representatives.

III. TITAN TIRE CREATES A PRESUMPTION OF DEPRIVATION THAThift THE BURDEN onto UNIONS

This Comment recommends that the Seventh Circuit’s analysis in Titan Tire should be rejected by other jurisdictions. Union representatives provide a great service to their employer and their fellow employees by filing grievances, settling disputes in an efficient manner, and maintaining compliance with the applicable laws and agreements. Companies should not refuse to compensate union representatives who provide services to their company. These payments fall under the exceptions of Section 302 of the LMRA. Following the Seventh Circuit’s overreaching analysis in Titan Tire has led to inconsistency and undermines the role of arbitrators.

A. Businesses Should Compensate Union Representatives Because a Refusal Would be Unjust.

The Seventh Circuit’s ruling in Titan Tire is in directly conflicts with prior precedent and creates a circuit split with regards to the proper interpretation of Section 302 of the LMRA. The ruling in Titan Tire is overly broad and states that the “by reason of” exception only recognizes that salaries of current or former workers are not guaranteed under this provision. These employees may have a right to receive payments arising from the services they perform, but the majority’s analysis does not take into consideration that Section 302 does not explicitly state this specific limitation. The statutory language provided within the LMRA uses the broad language, and if it was the legislature’s intent to include such conclusory statements, it would have explicitly done so.

132. See, e.g., David G. Branchflower & Richard B. Freeman, Unionism in the United States and Other Advanced OECD Countries, 31 INDUS. REL. 56, 70–72 (1992) (recognizing the trend that employers will start to oppose unions and union compensation when their costs start increasing).

133. See Titan Tire Corp. of Freeport v. United Steelworkers, 734 F.3d 708, 731 (7th Cir. 2013) (Wood, J., dissenting) (explaining that Section 302 of the LMRA’s use of the language “by reason of” does not expressly state that union representatives’ compensation should come from the services they perform for their employer, but this interpretation can be inferred).

134. E.g., 29 U.S.C. § 186(a) (1994) (quoting the use of such language as “any
Moreover, the analysis used by the Seventh Circuit fails to adequately recognize the importance of the former relationship between the employer and the employee, which may justify the payment of the salaries of certain union representatives. Collective bargaining agreements avoid conflicts between management and unions by utilizing grievance protocols and procedures that are binding on all parties.\textsuperscript{135} The union representative plays a vital role during labor dispute negotiations between management and its employees and possesses the required knowledge of industry standards, the bargaining agreement, as well as other procedures involved.\textsuperscript{136} Additionally, the statutory language does not require that the exception be available to only part-time union representatives or it would have explicitly stated so in Section 302. Therefore, the Seventh Circuit’s interpretation denying the payment of full-time, on-leave, union representatives is unjust, arbitrary and will lead to inconsistent results.

B. Overturning an Arbitral Award Sets a Dangerous Precedent and is Over-reaching.

As pointed out in Justice Wood’s dissent in Titan Tire, the majority decided the case based on how they would have come to the result rather than determining whether the arbitrator’s decision was in violation of the bargaining agreement.\textsuperscript{137} This line of reasoning is not the correct standard of review regarding the award. The Seventh Circuit’s reversal of the award sets a standard that allows courts to overturn arbitration awards if it disagrees with the outcome or if its feels a mistake has been made.\textsuperscript{138}

The majority’s narrow analysis focuses on the reviewing court’s ability to overturn awards that go against public policy.\textsuperscript{139} The union

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\item \textsuperscript{135} See John P. Sanderson, The Art of Collective Bargaining 1 (1979) (explaining that a specific list of covenants that both parties within the collective bargaining agreement should abide by).
\item \textsuperscript{136} See Titan Tire Corp., 734 F.3d at 732 (Wood, J., dissenting); see also Erickson, supra note 103, at 21 (voicing the success of unions rely greatly on the representatives who are filing grievances on behalf of the employees).
\item \textsuperscript{137} See Titan Tire Corp., 734 F.3d at 730 (focusing on the fact that majority’s de novo review may have attempted to interject their own analysis saying that an arbitrator cannot make decisions that are illegal and thus concluding that the award was unjust and void against public policy).
\item \textsuperscript{138} See, e.g., Oxford Health Plans LLC v. Sutter, 133 S. Ct. 2064, 2068 (2013); see also Stolt-Nielsen v. AnimalFeeds Int'l. Corp., 559 U.S. 662, 671 (2010) (stating that only evidence showing a grave error has been made is sufficient to vacate an arbitral decision).
\item \textsuperscript{139} See W.R. Grace & Co. v. Local Union 759, 461 U.S. 757, 766 (1983); see also Hurd v. Hodge, 334 U.S. 24, 35 (1948) (asserting “[T]he terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in the Constitution, treaties, federal statutes, and
representatives received a pay increase for the services they performed for the union that was disproportional to their previous rate of pay. This pay increase was specified in the bargaining agreement between the two parties and the representatives also received fringe benefits such as health care and pensions. Both parties agreed to these terms, otherwise such provisions would not have been listed in the agreement. Also, salaries and fringe benefits are considered "things of value" as listed in Section 302 of the LMRA. Therefore, they should have been covered. The Seventh Circuit, however, disagreed and concluded that these payments were illegal.140

Allowing the Seventh Circuit to overturn an arbitrator's award will give other courts the notion that awards such as these do not need to be followed. As a result, other courts will utilize the same type of policy analysis to overturn awards they feel have been decided improperly. This gives the judiciary unfettered discretion and power regarding arbitration awards, allowing them to overturn awards as they see fit. Arbitration decisions should be followed, unless clear and convincing evidence shows extreme bias or a blatant disregard for the truth.

C. Future Implications of the Seventh Circuit's Interpretation of the LMRA

The Seventh Circuit's split from the Third Circuit provides an interpretation of the LMRA that is both broad and narrow with respect to different clauses of the statute. Section 302(a)'s prohibition of payments is broadly interpreted whereas Section 302(c)'s exceptions clause is narrowly interpreted. Under the Seventh Circuit's interpretation of 302(c), payments not specifically prohibited in 302(a) will be scrutinized more closely and may not be considered an exception under the statute's "by reason of" language. In addition to both the narrow and broad construction of Section 302 of LMRA, other implications within unions could potentially arise from the current analysis in Titan Tire, including what constitutes "a thing of value" under the statute.

CONCLUSION

This Comment argues that further clarifications in legislation are needed to prevent further ambiguities within the law. It seeks to point out that there will continue to be opposing viewpoints until the proper authorities give further clarification as to which analysis is preferred to maintain the legislative intent of the LMRA in preventing bribery and coercion within the workplace, as governed by the LMRA. The Seventh Circuit's ruling in

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140. See Titan Tire Corp., 734 F.3d at 713.
Titan Tire directly conflicts with previous rulings by the Second, Third, and Ninth Circuits allowing the payment of full-time union representative under Section 302 of the LMRA. This split amongst the circuits has already led to increased scrutiny regarding the interpretation of Section 302 in Unite Here Local 355 v. Mulhall.\footnote{134 S. Ct. 594 (2013).} Mulhall was initially granted certiorari and oral argument was heard before the U.S. Supreme Court, but the case was ultimately dismissed as being improperly granted.\footnote{See Faman, supra note 5 (observing that ambiguity still exists within the statute); see also Unite Here Local 355, 135 S. Ct. at 594 (2013) (Breyer, J., dissenting) (indicating that the opposing views of the LMRA among the Court of Appeals not only affect the collective bargaining process, but could impose strict punishments for employers of union representatives found guilty of corrupt practices).} Although the decision is not expected until the end of the current term of the Court, it seems that further scrutiny of the interpretation of the LMRA will continue on a regular basis until a proper interpretation is adopted by the Supreme Court. Until a proper interpretation of the statute is decided, there will continue to be differences of opinion. Furthermore, this decision will lead to an increase in litigation where the judiciary will have to decide whether payments to full-time union representatives on leave are against the law.