United States Government

NATIONAL LABOR RELATIONS BOARD

Region 9
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Telephone: (513) 684-3686
Facsimile: (513) 684-3946

June 13, 2005

Mr. Dan L. McQuesten
4180 Roundbottom Road
Cincinnati, OH 45244

Re: UNITED FOOD & COMMERCIAL WORKERS
LOCAL UNION NO. 1099
(Kroger)
Case 9-CB-11358

Dear Mr. McQuesten:

The Region has carefully investigated and considered your charge against United Food & Commercial Workers Local Union No. 1099 (Kroger) alleging violations under Section 8 of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons:

The investigation does not support the allegation of the charge that the Union did not properly represent you with respect to your suspension/termination grievance for arbitrary, invidious or discriminatory reasons in violation of Section 8(b)(1)(A) of the Act. The investigation revealed that the Union assisted you and processed your grievance up to the point

of the arbitration step in the grievance procedure. At that point, the Executive Board of the Union concluded that this grievance lacked merit and decided not to arbitrate the grievance.

The Board and the Courts have recognized that a union must be given a wide range of reasonableness in representing its members but the exercise of that discretion must be in good faith and free from reliance on impermissible considerations. *Ford Motor Company v. Huffman,* 345 U.S. 330 (1953). Accordingly, a union does not violate the duty of fair representation where it refuses to process a grievance pursuant to a reasonable interpretation of the collective-bargaining agreement or a good faith evaluation of the merits of the grievance. *Amalgamated Transit Union Division* 822, 305 NLRB 946 (1992). In the instant case, it appears that the Union determined not to precede to arbitration due to its conclusion that the Employer could establish that you violated certain of its rules. In the absence of any evidence that the Union acted on any impermissible considerations, it was concluded that further proceedings in this matter were not warranted, and I am, therefore, declining to issue a complaint in this matter.

***Charging Party's Right to Appeal*:** Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the Acting General Counsel of the National Labor Relations Board, Attn: Office of Appeals, Room 8820, 1099 – 14th Street, N.W., Washington, D.C. 20570-0001, and a copy with the Regional Director.

***Appeal Due Date*:** The appeal must be received by the Acting General Counsel in Washington, D.C. by the close of business at **5:00 p.m. EDST on June 27, 2005**. If you mail the appeal, it will be considered timely if it is postmarked no later than one day before the due date set forth above. The appeal may not be filed by facsimile transmission or by using the Internet.

***Extension of Time to File Appeal*:** Upon good cause shown, the Office of Appeals, on behalf of the Acting General Counsel may grant special permission for a longer period within which to file. Requests for extension of time may be filed by mail, by facsimile transmission at Fax number (202) 273-4283, or by using the Agency's Internet site. Special instructions for using the Internet are set forth in the attached Access Code Certificate. The request must be received no later than the time and date set above for filing of the appeal. A copy of any such request for an extension of time should be submitted to the Regional Director.

***Appeal Contents*:** You are encouraged to submit a complete statement setting forth the facts and reasons why you believe the decision to dismiss your charge was incorrect. However, the enclosed Appeal Form (NLRB-4767) by itself will be treated as an appeal if timely filed upon the Acting General Counsel and me.

***Notice to Other Parties of Appeal*:** You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the Acting General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter. Any statement in support of your appeal should not be sent to the other party(ies). Mailing the appeal form to the parties does not relieve you from filing the appeal itself with the Acting General Counsel and sending a copy of the appeal to me by the due date.

Very truly yours,

/s/

Gary W. Muffley
Regional Director

GWM/DAB/md

Attachments (6)

cc's on next page
cc: United Food and Commercial Workers
International Union, Local 1099, AFL-CIO-CLC
Attn: Ms. Karen Brown
913 Lebanon Street
Monroe, OH 45050-1495

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Kroger
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