



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 22
20 WASHINGTON PL
FL 5
NEWARK, NJ 07102-3127

Agency Website: www.nlrb.gov
Telephone: (973)645-2100
Fax: (973)645-3852

November 29, 2018

(b) (6), (b) (7)(C)

Re: AFSCME New Jersey Counsel 63
Case 22-CB-225684

Dear (b) (6), (b) (7)(C)

We have carefully investigated and considered your charge that AFSCME New Jersey Counsel 63 has violated 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 the charge for the following reasons:

The evidence adduced by the investigation is insufficient to establish your allegation that the Union breached its duty of fair representation by failing to assist you and to process your grievance regarding the Employer's decision to terminate your employment. In this regard, the investigation revealed that the Union considered and investigated your grievance, including meeting with the Employer and requesting that it reduce your termination to a suspension, which the Employer refused to do citing your actions in violation of the Employer's policy against swiping the time card of a colleague, which you do not deny. The investigation further revealed that, notwithstanding your acknowledgment that you committed the described infraction, the Union submitted your grievance to its Executive Board for its consideration. The Executive Board met to review your grievance and ultimately decided not to proceed further based on its assessment of the relative merits of the grievance and its conclusion that it was unlikely to prevail at arbitration. The investigation revealed insufficient evidence that the Union acted in an arbitrary or capricious manner in representing you or that its actions were based on discriminatory or other unlawful considerations.

Based on the foregoing, it cannot be concluded that the Union breached its duty of fair representation or otherwise acted unlawfully in its handling of your discharge grievance. It is well established that labor organizations are afforded a wide range of reasonableness in representing employees in grievances and absent discriminatory or other arbitrary factors, not present here, their decisions will not be overturned. See generally, *Vaca v. Sipes*, 386 U.S. 171 (1967); *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953); *Miranda Fuel Company, Inc.*, 140 NLRB 181 (1962). Absent evidence of discriminatory or invidious treatment herein, it cannot be concluded that the Union violated the Act as alleged.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **December 13, 2018**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than December 12, 2018. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before December 13, 2018**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after December 13, 2018, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to

keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric Schechter", with a long horizontal flourish extending to the right.

Eric Schechter
Acting Regional Director

Enclosure

cc: SONYA MALDANADO, DIRECTOR
JERSEY CITY MEDICAL CENTER
355 GRAND ST
JERSEY CITY, NJ 07302-4321

THOMAS H CLARKE, ESQ.
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November 30, 2018

(b) (6), (b) (7)(C)

Re: I.L.A., LOCAL 1235
Case 22-CB-227509

Dear (b) (6), (b) (7)(C)

We have carefully investigated and considered your charge that Local 1235, ILA has violated the National Labor Relations Act.

Approval of Request to Withdraw Portion of the Charge: I approve withdrawal of the allegation that on (b) (6), (b) (7)(C) 2018, ILA Local 1235 breached its duty of fair representation by discouraging (b) (6), (b) (7)(C), its member employed at APM Terminals Elizabeth LLC, from filing a grievance protesting a no-show debit (b) (6) received for failing to work on April 8, 2018.

Decision to Partially Dismiss: The remaining portion of this charge alleges that ILA Local 1235 breached its duty of fair representation by agreeing with the Employer to remove the Charging Party from (b) (6), (b) (7)(C) gang. There is insufficient evidence to support this allegation. The investigation revealed that the Employer is the only entity with the authority to approve a request for removal of a gang member. The investigation further revealed that the Employer, by its gang (b) (6), (b) (7)(C) did seek the Charging Party's removal on or about (b) (6), (b) (7)(C) 2018. There is no evidence that the Union officers took any part or were involved in any way with the decision to seek the removal of the Charging Party. Although the Employer asserts that it understood that the Union agreed with the Employer's decision, the investigation failed to find evidence to support this assertion. Accordingly, no evidence was presented to support a claim that the Union breached its duty of fair representation and I am therefore, dismissing this allegation.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

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delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

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Appeal Due Date: The appeal is due on **December 14, 2018**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than December 13, 2018. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before December 14, 2018**. The request may be filed electronically through the *E-File Documents* link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after December 14, 2018, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

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Very truly yours,

/s/ David E. Leach III

David E. Leach III
Regional Director

Enclosure

cc: RICHIE SUAREZ, PRESIDENT
LOCAL 1235, ILA
30 HENNESSEY ST
NEWARK, NJ 07105-2407

(b) (6), (b) (7)(C)
LOCAL 1235, INTERNATIONAL
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