



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 32
1301 Clay St Ste 300N
Oakland, CA 94612-5224

Agency Website: www.nlrb.gov
Telephone: (510)637-3300
Fax: (510)637-3315

August 22, 2018

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

**Re: Teamsters Local 853 (MV
Transportation)
Case 32-CB-217764**

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

We have carefully investigated and considered your charge that Teamsters Local 853 (the Union) has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below. Although your charge alleges that the Union violated the Act by refusing to process grievances concerning your termination from employment and reimbursement for tools for arbitrary or discriminatory reasons or in bad faith, the investigation disclosed that the Union exercised its discretion properly based upon the circumstances of your case. While you contend that you left the job in the middle of your scheduled work day after being told to leave after an argument with your supervisor, the Employer denied that you were told to leave and therefore you had either quit and/or abandoned your job. Despite some evidence that your version of the facts are true rather than the Employer's version, the Union declined to further pursue your grievance based on its assessment that it would be difficult to prevail at later stages of the grievance procedure since an arbitrator would have to resolve a credibility issue. You also filed a grievance concerning reimbursement for tools. This grievance was denied and the Union declined to appeal it because it believed that the collective-bargaining agreement did not support your position. A violation of the Act turns not on the merits of a potential grievance, but on whether the union exercised its discretion in a perfunctory or arbitrary manner when it decided whether or not to pursue the grievance. *Vaca v. Sipes*, 386 U.S. 171 (1967). The law is well-established that, in representing employees, a union retains a broad range of discretion in processing grievances. A union's actions are considered arbitrary under the duty of fair representation "only if, in light of the factual and legal landscape of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness' as to be irrational." *IAM Local Lodge 2777 (L-3 Communications)*, 355 NLRB 1062, 1064 (2010), quoting *Air Line Pilots Assn v. O'Neill*, 499 U.S. 65, 67 (1991) and *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). Here, the evidence established that the Union's decision not to further pursue your termination grievance was reasonable and not irrational or arbitrary given that the merits of your grievance hinged on a credibility resolution. In these circumstances, the Union is entitled to make a risk assessment and decide to drop a grievance that it may not ultimately prevail on. Likewise, the Union's interpretation of the collective-bargaining agreement was reasonable with respect to your tool reimbursement grievance since there is no contractual provision providing for reimbursement. Therefore, given the overall absence of any evidence the Union's actions

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were motivated by unlawful considerations, or that it purposefully or willfully misled you about your grievance, there is insufficient evidence to find a violation of the Act. Accordingly, your charge is being dismissed.

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 September 5, 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 September 4, 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** September 5, 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 September 5, 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

August 22, 2018

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,

/s/ Christy Kwon

Christy Kwon
Acting Regional Director

Enclosure

cc: (b) (6), (b) (7)(C)
MV TRANSPORTATION
1944 WILLIAMS ST
SAN LEANDRO, CA 94577-2304

EFREN ALARCON, BUSINESS REPRESENTATIVE
TEAMSTERS LOCAL 853
7750 PARDEE LN
OAKLAND, CA 94621-1497



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August 31, 2018

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

Re: Communications Workers of America
Local 9404 (Service Employees
International Union Local 1021)
Case 32-CB-220110

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

We have carefully investigated and considered your charge that Communications Workers of America Local 9404 has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge because there is insufficient evidence to establish a violation of the Act.

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.nlrb.gov and:

- 1) Click on E-File Documents;
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- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlrb.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 **September 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 September 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 September 14, 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 September 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.

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,

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director

Enclosure

cc: MARK BAUTISTA, EXECUTIVE
VICE PRESIDENT
COMMUNICATIONS WORKERS OF AMERICA
LOCAL 9404
195 GLEN COVE MARINA RD STE 101
VALLEJO, CA 94591

Communications Workers of America Local - 3 - August 31, 2018
9404 (Service Employees International
Union Local 1021)
Case 32-CB-220110

NELY OBLIGACION
SERVICE EMPLOYEES
INTERNATIONAL UNION,
LOCAL 1021
100 OAK STREET
OAKLAND, CA 94607-4510



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August 30, 2018

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

Re: Teamsters, Local 948 (Del Monte Foods)
Cases 32-CB-219340 and 32-CB-220460

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

We have carefully investigated and considered your charge that Teamsters Local 948 has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charges for the reasons discussed below.

In the charge in Case 32-CB-219340, you allege that the Union failed to process your grievance regarding the Employer not sending you information about job postings for arbitrary or discriminatory reasons or in bad faith. However, the investigation revealed that the Union had a reasonable basis to not further pursue the grievance after your Employer denied the grievance based on your failure to complete the required form to receive job posting information.

In the charge in Case 32-CB-220460, you allege that the Union failed to communicate with you and that it refused to process your grievances for arbitrary or discriminatory reasons in bad faith. Contrary to your failure to communicate allegation, the investigation revealed that the Union telephoned you to discuss your grievances but that you would not speak with them because the conversation was on a speakerphone. Next, in regards to your allegations that the Union failed to process your grievances, the evidence established that the Union did not further pursue them based on a reasonable view that they lacked merit. Specifically, you claim the Union should have filed a grievance over the Employer questioning employees about their wages. The questioning, if it occurred, appears to have been in connection with the Employer's defense against a wage claim. There is no evidence that the Union ever decided to undertake this grievance or that it should have. You also allege that the Union should have filed a grievance about your claim for Medical and Dental insurance. The evidence established that the Union did file a grievance over this issue, however, it could not be advanced because the contract does not provide such coverage in your case because you have not worked since (b) (6), (b) (7)(C) 2017. Therefore there is no basis to find the Union should have further pursued the matter. Similarly, you allege that the Union should have filed a claim for vacation and sabbatical pay. The Union did inquire about this, but the evidence shows that you were owed little or nothing because you have not worked for well over a year. Moreover, the Employer's position is that you could only be paid vacation if you were scheduled to work, and you have not been scheduled to work at any time since (b) (6), (b) (7)(C) 2017. Given these circumstances, there is nothing arbitrary or irrational about the

Union's determination not to further pursue grievances that were weak or baseless under the contract. You also allege the Union should have filed a grievance over the Employer's alleged failure to provide work within (b) (6), (b) (7)(C). The evidence established that the Union did file a grievance on this issue; however, the Employer refused to provide additional work. Although the Union did not further pursue this grievance, the issue is clearly being resolved through your (b) (6), (b) (7)(C) that you are presently litigating, which, should you be successful, will provide full relief. You further the Union failed to assist you in returning to work when you (b) (6), (b) (7)(C) to the Employer in (b) (6), (b) (7)(C) 2018. However, the Union did assist you in two meetings with the Employer, but after (b) (6), (b) (7)(C), it was evident that (b) (6), (b) (7)(C) to the Employer was inadequate. In this regard, your (b) (6), (b) (7)(C) failed to address your (b) (6), (b) (7)(C) related (b) (6), (b) (7)(C) that had (b) (6), (b) (7)(C) you from (b) (6), (b) (7)(C) your (b) (6), (b) (7)(C) since (b) (6), (b) (7)(C). Thus, the Union's failure to pursue this grievance was not an arbitrary decision. Furthermore, there is no evidence that the Union's determinations regarding any of the above-referenced grievance matters were motivated by animus or other unlawful considerations. Finally, the Union is not obligated to provide you an attorney to pursue the above claims as you assert.

It is well settled that a union has an obligation to represent employees fairly, in good faith, and without discrimination against any of them on the basis of arbitrary, irrelevant, or invidious distinctions. *Vaca v. Sipes*, 386 U.S. 171, 177-178 (1967). However, so long as the union exercises its discretion in good faith and with honesty of purpose, it is allowed a wide range of reasonableness in the performance of its duties. *Air Line Pilots v. O'Neill*, 499 U.S. 65, 67 (1991). A union's actions breach the duty of fair representation "only if [the union's conduct] can be fairly characterized as so far outside a 'wide range of reasonableness' that it is wholly 'irrational' or 'arbitrary.'" *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 46 (1998). In this case, there is insufficient evidence to establish that the Union acted unreasonably; that its conduct was irrational or arbitrary; that it acted in bad faith; or that it acted discriminatorily. To the contrary, the evidence showed that the Union did not further process your grievances pursuant to a reasonable interpretation of the collective-bargaining agreement and/or a good-faith evaluation regarding the merits of the complaint. Accordingly, I am declining to further pursue your charges at this time.

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.nlrb.gov and:

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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.

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Very truly yours,

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director

Enclosure

cc: IRENE GALLEGOS, HR
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(b) (6), (b) (7)(C)

TEAMSTERS UNION LOCAL 948
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