



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

July 30, 2018

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

Re: International Brotherhood of Teamsters,
Local 70 (United Parcel Service)
Case 32-CB-216186

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

We have carefully investigated and considered your charge that International Brotherhood of Teamsters, Local 70 (the Union) 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:

Your charge alleges that the Union violated Section 8(b)(1)(A) of the Act by failing or refusing to process your grievances regarding unit work assigned out of seniority, and for misleading you about the status of your grievance, for arbitrary or discriminatory reasons or in bad faith. Contrary to the allegations of the charge, the evidence was insufficient to establish that the Union's handling of your grievances was discriminatory, arbitrary or perfunctory, or that it misled you about the status of these grievances. Rather, the evidence established that the Union never informed you it was intending to undertake or process your grievance requests in any way, or that it was doing so. Indeed, the totality of the evidence shows the opposite. Your text messages to the Union went unanswered, you understood that your grievances were not appearing on the grievance lists, and the Employer also confirmed it did not have a record of any grievances filed on your behalf. Therefore, there was no reasonable basis for you to believe that the Union ever filed grievances on your behalf or that it was intending to do so. Even if the Union had reviewed your grievance request forms, there is no evidence to establish that the Union's decision to not pursue any grievances was based on any hostility towards you or any other discriminatory motive, or that it acted arbitrarily or outside the wide range of reasonableness afforded to it in representing employees. 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, even if it had a record of your grievance forms, would reasonably have decided that your out-of-seniority assignment grievance lacked merit based on your lack of seniority at the Lathrop facility, where you were working on temporary assignment. The fact the Union has no record of your grievance, without more, is mere negligence. Lastly,

there is no evidence the Union purposefully or willfully misled you about the status of your grievance as it never communicated to you in any way that it was intending to file your grievances or that it had. Accordingly, I am dismissing the charge in this case.

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;
- 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.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 August 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 August 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** August 13, 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 August 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,

/s/Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director

Enclosure

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July 27, 2018

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

**Re: United Food Commercial Workers,
Local 5 (See's Candy)
Case 32-CB-217982**

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

We have carefully investigated and considered your charge that United Food and Commercial Workers Local 5 has violated the National Labor Relations Act.

Decision to Dismiss:

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). Here, the evidence was insufficient to conclude that the Union's conduct was arbitrary or violated Section 8(b)(1)(A) of the Act. The investigation established that you were hired as a seasonal employee and after your probationary period you became a member of the Union. In this regard, the Union met with you about two months after you were hired, provided you with a copy of the collective-bargaining agreement, and reviewed the provisions with you. While the Union could have received you into membership and met with you sooner, its failure not to do so does not establish a violation of the Act. In addition, the Union processed grievances on your behalf to secure lost work hours you should have been offered according to your seniority, to have the Employer post a job opening, and to convert you from seasonal status to a regular full-time retail clerk position. The evidence further established that the Union investigated the circumstances of your complaints that the Employer allegedly failed to promote you to management and provide you certain opportunities for training and concluded that the Employer had not breached any contractual provisions related to these matters. Finally, as to the concerns you relayed to the Union that the Employer retained inaccurate or falsified documents regarding your employment, those matters were raised and corrected by the Employer. There was also insufficient evidence to establish that the Union harbored any animus against you that improperly influenced any of its actions regarding your work-related concerns. In these circumstances, it cannot be concluded that the Union acted arbitrarily or otherwise failed to fairly represent you in violation of Section 8(b)(1)(A) of the Act. Accordingly, I am dismissing your charge in its entirety.

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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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Very truly yours,

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director

Enclosure

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