



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

September 25, 2018

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

Re: Teamsters Local 533, International
Brotherhood of Teamsters, (United Parcel
Service, [UPS] Freight)
Case 32-CB-221909

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

We have carefully investigated and considered your charge that Teamsters Local 533, International Brotherhood of Teamsters (Union) has violated the National Labor Relations Act.

Decision to Dismiss:

Your charge, as elaborated upon during the investigation, alleges that the Union violated Section 8(b)(1)(A) of the Act by refusing to process a grievance on your behalf regarding a work assignment on (b) (6), (b) (7)(C) 2018. While a union must fairly represent all employees who bring grievances against an employer, the National Labor Relations Board has held that this does not mean that the Union has an absolute obligation to file a grievance or that an employee has an absolute right to have his or her grievance taken to arbitration. *Teamsters Local 337 (Swift-Eckrich)*, 307 NLRB 437, 348 (1992). In this regard, 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 was insufficient to establish that the Union unlawfully handled your complaint that you were not allowed to choose your secondary route on (b) (6), (b) (7)(C) 2018. In particular, the evidence failed to establish that the Union's decision not to pursue a grievance on your behalf was motivated by the fact that you had resigned your membership and/or that you had refused to serve as a shop steward. To the contrary, the investigation established that the Union promptly responded to your (b) (6), (b) (7)(C) 2018 text message. Further, although you did not specifically request that a grievance be filed on your behalf or that the Union investigate the matter, the Union conducted an investigation which resulted in its good-faith evaluation that the Employer had not violated the relevant rules and procedures. In these circumstances, I am declining to issue complaint and am dismissing your charge.

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 October 9, 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 October 8, 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** October 9, 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 October 9, 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

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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: DEBBIE CALKINS,
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September 28, 2018

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

Re: National Association of Letter Carriers,
Branch 193 (United States Postal Service)
Case 32-CB-221942

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

We have carefully investigated and considered your charge that National Association of Letter Carriers, Branch 193 (the Union) has violated the National Labor Relations Act and the Postal Reorganization Act.

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

Your charge alleges that the Union violated the Act by refusing to properly process multiple grievances on your behalf since 2016.

With respect to a grievance that you allege the Union failed to file in 2016 over a denial of (b) (6), (b) (7)(C) work, the investigation disclosed that although the Union did not file the requested grievance, it assisted you and represented you in an appeal to the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) over the same denial of (b) (6), (b) (7)(C). Moreover, you filed this charge on June 11, 2018, more than six months after December 8, 2017, a date on which you admit you knew that the Union was not pursuing this grievance. Section 10(b) of the Act provides that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing and service of the charge. Accordingly, your charge was not timely filed with respect to the Union's failure to file a grievance over this dispute.

With respect to your allegation that the Union refused to process a grievance over your right to interview witnesses in connection with an (b) (6), (b) (7)(C) hearing, the Union declined to pursue a grievance over this issue because there is no such right in the collective-bargaining agreement under which it could have resolved this dispute and it advised you of its assessment.

With regard to your remaining allegations over the Union's failure to file grievances over the Employer denying you a two-hour reporting time guarantee, suspending you over unacceptable conduct and failure to follow instructions, not allowing you to submit leave slips, ordering you to leave the facility, and calling the police when you failed to do so, and refusing to give you work within your (b) (6), (b) (7)(C) the investigation disclosed that the Union either pursued grievances over these matters and settled them or appealed them to arbitration. While I

do not condone the Union's failure to consistently keep you advised of the status of each grievance at every stage, the evidence is insufficient to establish that its conduct constitutes arbitrary or perfunctory handling of your grievances.

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, as explained above, the evidence is insufficient to establish that the Union's conduct with respect to your grievances was arbitrary, perfunctory, motivated by bad-faith, or otherwise violated Section 8(b)(1)(A) of the Act. Accordingly, I am dismissing your charge.

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

cc: JOSEPH J. VITALE, ESQ.
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