



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlr.gov
Telephone: (410) 962-2822
Fax: (410) 962-2198

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

October 31, 2018

Re: Steamfitters Union Local 602 (Honeywell
Building Solutions)
Case 05-CB-222359

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

We have carefully investigated and considered your charge that Steamfitters Union Local 602 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.

Your charge alleges that Steamfitters Union Local 602 (the Union) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by refusing to process your grievance for arbitrary or discriminatory reasons on in bad faith. Specifically, you maintain the Union refused to process a grievance related to your pay.

The investigation established that around January 2018, you informed the Union that you believed you were not being paid in accordance with the Supplemental Service Agreement (the Agreement) between the Mechanical Contractors Association of Metropolitan Washington, Inc. and the Union. On January 26, 2018, the Union notified you that it investigated your complaint and determined that you were being paid in accordance with the Agreement. More specifically, the Union informed you that your schedule (a ten hour day, four days per week) was governed by paragraph 25 of the Agreement; and, the paragraphs you relied upon in protesting your pay were inapplicable to your situation, as they related to eight-hour shifts. The Union then advised you that given the length of time you had been working your schedule (approximately (b) (6), (b) (7)(C)), there was no basis for the Union to now claim your schedule was something other than a ten hour day, four days per week schedule.

It is well established that a union, as the exclusive representative of bargaining unit employees, has a statutory duty to fairly represent their interests in the processing of grievances. However, a breach of this duty occurs only when the union's actions towards employees are arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). Moreover, unions are given "substantial latitude in their representational decisions." *ATU Local 1498 (Jefferson Partners LP)*, 360 NLRB No. 96 (2014). The Union's conduct in this case does not violate the Act as alleged. As discussed above, the Union investigated your complaint and made a determination not to pursue the matter further based on an objective analysis of your complaint and the relevant provisions in the Agreement. Accordingly, the Union's handling of your complaint falls within the wide range of discretion a union is lawfully permitted to exercise.

Because the evidence fails to establish that the Union violated its duty of fair representation, further proceedings are not warranted and I am refusing to issue complaint in this matter.

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.

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Very truly yours,

/s/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure

cc: Mr. Christopher Madello
Business Representative/Organizer
Steamfitters Union Local 602
8700 Ashwood Drive, 2nd floor
Capitol Heights, MD 20743

Keith R. Bolek, Esq.
O'Donoghue & O'Donoghue, LLP
5301 Wisconsin Ave., N.W., Suite 800
Washington, DC 20015

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

Honeywell Building Solutions
400 Herndon Pkwy, Suite 100
Herndon, VA 20170-5299



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

October 31, 2018

Re: Amalgamated Transit Union, Local 1764
(First Transit)
Case 05-CB-222630

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

We have carefully investigated and considered your charge that Amalgamated Transit Union, Local 1764 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.nlr.gov and:

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Very truly yours,

/s/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure

cc: Mr. Aaron Duffy, President
Amalgamated Transit Union, Local 1764
10000 New Hampshire Avenue
Silver Spring, MD 20903-1790

Mr. Marvin Greene
First Transit
1710 17th Street N.E.
Washington, DC 20002-1810



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October 31, 2018

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

Re: LIUNA, Local 11
(Keystone Plus Construction Corp.)
Case 05-CB-223479

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

We have carefully investigated and considered your charge that LIUNA, Local 11 (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.

Your charge alleges that about (b) (6), (b) (7)(C) 2018, Keystone Plus Construction Corp. (the Employer) underpaid you for the time you had spent working at its Calvin Coolidge High School project in Washington, DC, and that you sought the Union's assistance on this matter shortly thereafter. Your charge further alleges that about (b) (6), (b) (7)(C) 2018, a co-worker physically assaulted you while at the Employer's project and that you sought the Union's assistance with that matter as well.

With regard to the pay allegation, the investigation revealed that you did not return to work for the Employer after (b) (6), (b) (7)(C) 2018, and that, after you did not retrieve certain checks covering your outstanding pay, the Union communicated with the Employer and agreed to receive those checks and hold them for you. The investigation also revealed that the Union communicated with you multiple times and asked you to come to the Union hall to retrieve your checks, and so that you could review the pay totals with the Union in the process, but you failed to do so and subsequently asked the Union to stop calling you. Although you did subsequently visit the Union's office around August 10, 2018, you arrived unannounced and left before the respective Union representative could arrive to hand over the checks to you.

With regard to the assault allegation, the investigation revealed that the Union conducted an investigation of the alleged assault after the Employer contacted them on the date of the incident. Based on its investigation, the Union concluded that there was insufficient evidence that the alleged assault took place, or that there was some other violation that merited having the Union take action against the Employer. Nevertheless, the investigation also revealed that you contacted the Union afterward to ask if anybody had made an incident report about the assault. The investigation, however, found insufficient evidence that you requested the Union take any action against the Employer, including filing a grievance, and that to the extent you sought action to be taken, it was against another employee and not the Employer. The investigation additionally found that after initially asking the Union about an incident report, you spoke to the Union multiple times afterward about your pay issue but did not raise the subject of the alleged assault.

It is well established that a union has a duty of fair representation to its members. *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953). The Supreme Court defined this duty as “a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.” *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). Unions are allowed a “wide range of reasonableness in serving unit employees, and any subsequent examination of a union’s performance must be ‘highly deferential’.” *Letter Carriers Branch 529*, 319 NLRB 879, 880 (1995), quoting in part *Air Line Pilots Assn. v. O’Neill*, 399 U.S. 65, 78 (1991). Even if a union mishandles a grievance, it must do something that goes beyond mere negligence or poor judgment to support a finding of arbitrary conduct. *Teamsters Local 337*, 307 NLRB 437, 438 (1992). Additionally, a grievant’s failure to cooperate with a Union’s investigation can serve as the basis for a Union’s decision to not pursue a grievance. *H&M International Transportation, Inc.*, 363 NLRB No. 13 slip op. at 2.

In the instant case, the Union provided assistance with your pay issue and received two checks on your behalf that the Employer believed would cover the balance. However, despite the Union’s efforts, you failed to fully cooperate with the Union on the resolution of the matter and even requested that they stop communicating with you. On the alleged assault, there is insufficient evidence that you asked the Union to file a grievance against the Employer, or otherwise take any other action against the Employer that would invoke the Union’s duty of fair representation. There is also insufficient evidence to establish the Union’s conduct was arbitrary, discriminatory, or in bad faith, or that it handled your concerns perfunctorily. Based on the foregoing, further proceedings are not warranted, and I am refusing to issue complaint in this matter.

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Very truly yours,

/s/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure

cc: Brian J. Petruska, Esq.
Professional and Public Service
Employees, Local Union 1310, affiliated
with Laborers International Union of
North America
11951 Freedom Drive, Suite 310
Reston, VA 20190

Mr. Dennis Gussman
Business Agent
LIUNA, Local 11
5201 1st Street, N.E.
Washington, D.C. 20011

John Hardin Young, Esq.
1925 Minnesota Ave., S.E., Suite A
Washington, D.C. 20020

Mr. Savoy Amir
Keystone Plus Construction Corp.
1925 Minnesota Avenue, S.E., Suite A
Washington, DC 20020



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October 31, 2018

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

Re: National Association of Letter Carriers
Branch 609 (United States Postal Service)
Case 05-CB-223550

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

We have carefully investigated and considered your charge that National Association of Letter Carriers, Branch 609 (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.

The charge alleges the Union violated Section 8(b)(1)(A) of the Act since about (b) (6), (b) (7)(C) 2018, by terminating your union membership and causing you to lose your health insurance, for reasons other than the failure to tender uniformly required initiation fees and periodic dues.

The investigation showed that the Union terminated your membership because of your failure to pay dues or make arrangements to pay current and past dues. The Board has found that it will not scrutinize internal union matters, including discipline of members or removal from membership, and that such activity is not proscribed by Section 8(b)(1)(A) of the Act unless it impacts an employee's relationship with the employer, impairs access to the Board's processes, pertains to unacceptable methods of union coercion, such as physical violence in organization or strike contexts, or otherwise impairs policies imbedded in the Act. *Office and Professional Employees International Union, Local 251 (Sandia Corp. d/b/a Sandia National Laboratories*, 331 NLRB 1417, 1425-26 (2000). Here, the evidence did not establish that the Union's actions impacted your employment relationship, impaired access to the Board's processes, was an unacceptable method of union coercion, or otherwise impaired the policies of the Act, and therefore, the Union's alleged conduct is outside the scope of activities regulated by the Act.

Accordingly, further proceedings are not warranted, and I am refusing to issue a complaint in this matter.

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Very truly yours,

/s/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure: Appeal Form

cc: Ms. Sharon Parker, Acting Postmaster
United States Postal Service
14104 Warwick Boulevard
Newport News, VA 23602-5653

Roderick D. Eves, Esq.
United States Postal Service
Law Department-NLRB Unit
1720 Market Street, Room 2400
Saint Louis, MO 63155-9948

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

National Association of
Letter Carriers Branch 609
7812 Warwick Boulevard
Newport News, VA 23607-1524

Peter D. Dechiara, Esq.
Olivia R. Singer, Esq.
Cohen, Weiss and Simon, LLP
900 Third Avenue, Suite 2100
New York, NY 10022-4869



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

October 30, 2018

Re: International Union, Security, Police and
Fire Professionals of America (SPFPA),
Local 555 (MVM, Inc.)
Case 05-CB-223615

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

We have carefully investigated and considered your charge that International Union, Security, Police and Fire Professionals of America (SPFPA), Local 555 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.

Your charge alleges that International Union, Security, Police and Fire Professionals of America (SPFPA) Local 555 (the Union) violated Section 8(b)(1)(A) of the Act by refusing to process a grievance on your behalf regarding lost wages. Specifically, you allege that the Union violated the Act when it agreed to a settlement of your grievance that failed to provide a backpay remedy.

While a union owes employees a duty of fair representation with regard to disputes arising with an employer, it is afforded a wide range of reasonableness in carrying out this duty. To find a breach of this duty requires a showing that the alleged conduct was arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); *Glass Bottle Blowers Local 106 (Owens-Illinois, Inc.)*, 240 NLRB 324 (1979).

Here, the evidence is insufficient to establish that the Union acted arbitrarily, discriminatorily, or in bad faith with regard to its handling of the grievance it filed on your behalf on (b) (6), (b) (7)(C) 2018, and settled in (b) (6), (b) (7)(C) 2018. The investigation established that the Employer discharged you on (b) (6), (b) (7)(C) 2018 for a (b) (6), (b) (7)(C) incident in which you made a log entry stating that you had provided relief for a coworker during (b) (6), (b) (7)(C) break when (b) (6), (b) (7)(C) had in fact never taken the break. In your (b) (6), (b) (7)(C) termination notice, the Employer indicated that your conduct constituted both "Neglect of Duty" and "Falsification" of official documents or records. On (b) (6), (b) (7)(C) your Union (b) (6), (b) (7)(C) filed a grievance, in which (b) (6), (b) (7)(C) requested that the Employer rescind your termination. The Employer notified you on (b) (6), (b) (7)(C) that you would be removed from the schedule pending the outcome of your grievance. On or about (b) (6), (b) (7)(C) the Union (b) (6), (b) (7)(C) settled your grievance with the Employer, resulting in your return to work, but providing no backpay remedy. The principal basis for your charge is your belief that you received no backpay because of a procedural error on the Union's part. However, the investigation did not establish

that the Union made any such error, or that you would have been prejudiced even if the Union had.

In your affidavit and in other communications with the Region, you have argued that the Employer could not have had legitimate grounds for discharging you because, in your experience, employees accused of falsifying records are never returned to work. In your case, however, it appears that the Union was successful in obtaining such a result, despite your admission that your (b) (6), (b) (7)(C) log entry contained a false representation. The investigation established that the Employer and Union agreed that your conduct warranted discharge under the parties' contractual Just Cause provisions. The Union was nonetheless successful in resolving the grievance in your favor, in spite of two other factors that limited the Union's ability to pursue your dispute absent settlement. First, the collective-bargaining agreement covering your bargaining unit (the contract) expired in February 2018. While the Just Cause provisions of the contract remained in place at the time of your discharge, case law holds that arbitration provisions generally do not survive beyond contract expiration. *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 199 (1991); *Lincoln Lutheran of Racine*, 362 NLRB No. 188, slip op. at 3 (August 25, 2015) (citing *Hilton-Davis Chemical Co.*, 185 NLRB 241, 242 (1970)). Accordingly, the Union may not have been able to insist that the Employer arbitrate your grievance. Second, your grievance may not have been arbitrable even if the contract had still been in effect. Your (b) (6), (b) (7)(C) termination notice cites language in the contract's Just Cause provisions that appears to limit the Union's ability to obtain remedies in arbitration for the conduct for which you were discharged. Finally, the investigation further established that the Employer credits the Union with persuading management to effectively reduce your discharge to a suspension, and that management refused to ever consider a backpay remedy in its negotiations with the Union—not because the Union failed to request it, but because of the nature of your misconduct.

Based on the foregoing, it cannot be established that the Union violated the Act as alleged in your charge, and I am refusing to issue complaint in this matter.

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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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/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure

cc: Mr. Christopher McHale
General Counsel
MVM, Inc.
44620 Guilford Drive, Suite 150
Ashburn, VA 20147-6063

Ms. Gloria Scott, President
International Union, Security, Police and
Fire Professionals of America (SPFPA),
Local 555
2701 W Patapsco Avenue, Suite 107
Baltimore, MD 21230-2732

Richard M. Olszewski, Esq.
Gregory, Moore, Jeakle & Brooks, P.C.
65 Cadillac Square, Suite 3727
Detroit, MI 48226



UNITED STATES GOVERNMENT
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REGION 5
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100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlr.gov
Telephone: (410)962-2822
Fax: (410)962-2198

October 23, 2018

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

Re: Teamsters Local 822
(Pepsi Bottling Group)
Case 05-CB-223767

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

We have carefully investigated and considered your charge that Teamsters Local Union 822 has violated the National Labor Relations Act.

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

Your charge alleges that the Union violated Section 8(b)(1)(A) of the Act when it refused to accept and process your grievance regarding your termination.

It is well established that a union breaches its duty of fair representation toward employees it represents when it engages in conduct affecting employment conditions which is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171 (1967). Unions retain broad discretion in disposing of a grievance short of arbitration. A violation does not turn on the merits of the grievance, but on whether the union exercised its discretion in a perfunctory or arbitrary manner. *Vaca v. Sipes*, 386 U.S. 171, 64 LRRM 2379 (1967); *Glass Bottle Blowers Local 106 (Owens-Illinois, Inc.)*, 240 NLRB 324 (1979).

The investigation failed to establish either that the Union processed your grievance or refused to arbitrate your grievance in an arbitrary or discriminatory manner, in bad faith, or any other manner prohibited by the Act. Rather, the investigation revealed evidence that the Union undertook steps to investigate your grievance. Although the Union declined to pursue arbitration, the preponderance of the evidence does not establish that the Union did so for any unlawful reason.

Based on the foregoing, I find that there is insufficient evidence to establish your charge as alleged. Further proceedings are not warranted, and I am refusing to issue a complaint herein.

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 **November 6, 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 November 5, 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 November 6, 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 November 6, 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.

October 23, 2018

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/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure

cc: Jonathan G. Axelrod, Esq.
Beins, Axelrod, P.C.
1030 15th Street, N.W., Suite 700 East
Washington, D.C. 20005

Mr. Steve Jacobs
Business Agent
Teamsters Local Union 822
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Norfolk, VA 23502

Ms. Maggie Donnelly
HR Sr. Manager
PepsiCo
555 W. Monroe St.
Chicago, IL 60521

Mr. Todd Thomas
Pepsi Bottling Group
17200 Warwick Boulevard
Newport News, VA 23603-1312



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Fax: (410) 962-2198

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

October 31, 2018

Re: National Association of Letter Carriers,
Oriole Branch No. 176 (United States
Postal Service)
Case 05-CB-223991

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

We have carefully investigated and considered your charge that National Association of Letter Carriers, Oriole Branch No. 176 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.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 **November 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 November 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 November 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 November 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/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure

cc: Mr. Norman Yingling
Executive Vice President
National Association of Letter Carriers,
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Ms. Artese Mackey, Officer-In-Charge
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October 19, 2018

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

Re: International Longshoremen's Association,
Local No. 333 (Ports America Chesapeake)
Case 05-CB-224175

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

We have carefully investigated and considered your charge that International Longshoremen's Association, Local No. 333 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.

Your charge alleges that International Longshoremen's Association, Local No. 333 (the Union) violated Section 8(b)(1)(A) by interfering with your efforts to obtain (b) (6), (b) (7)(C) certification, and failing and refusing to process grievances on your behalf regarding the (b) (6), (b) (7) certification.

The investigation revealed that you and another employee took an examination seeking (b) (6), (b) (7)(C) certification in February 2018. The examination had two components: a driving examination and a written examination. Both you and the other employee passed the driving examination. For the written examination, the required passing score was 90 percent. Your score was 86.59 percent, and the other employee's score was 89.57 percent. Following an established procedure, both scores were rounded up to the nearest whole number, resulting in a failing score of 87 percent for your test, and a passing score of 90 percent for the other employee. You allege that the other employee also failed the test, and that the Union made a special arrangement with Ports America Chesapeake (the Employer) to give the other employee an additional point to achieve a passing score. You further allege that when you were informed that you did not pass the test, you were told by the Union that adding an additional point to your test score would not result in a passing score, and that you would need to retake the written examination. You informed the Union that you would not retake the test.

A union breaches its duty of fair representation when its conduct toward a bargaining-unit employee is arbitrary, discriminatory, or in bad faith. *Vaca v. Snipes*, 386 U.S. 171, 190 (1967). The investigation disclosed insufficient evidence to substantiate this allegation. Rather, the evidence shows that both your exam score and the score of the other employee were rounded up to the next whole number. Your rounded score was objectively below the required passing score, while the other employee's was not. Further, there is insufficient evidence of instances

that departed from the established rounding procedure, or specifically where an employee's otherwise failing score was increased beyond rounding to the next whole number.

Regarding your allegation that the Union failed to file a grievance over your unsuccessful examination, unions have significant discretion in the handling of grievances. *Vaca v. Snipes*, 386 U.S. at 191. A union's actions are considered arbitrary if the union has acted "so far outside 'a wide range of reasonableness' as to be irrational." *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 67 (1991), quoting *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). As noted above, there is insufficient evidence that the Union's determination that you failed the written examination was arbitrary, discriminatory, or in bad faith. Further, you have not identified any other basis why the Union should have challenged your examination result. Accordingly, there is insufficient evidence that any failure of the Union to file a grievance about your examination score was a breach of its duty of fair representation. As such, I have concluded that further proceedings are not warranted, and I am refusing to issue a complaint in this matter.

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, S.E., 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 **November 2, 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 November 1, 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.

October 19, 2018

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 November 2, 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 November 2, 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/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure: Appeal Form

cc: Mr. John Coleman, Superintendent
Ports America Chesapeake
2200 Broening Highway
Baltimore, MD 21224

Paul D. Starr, Esq.
Abato, Rubenstein & Abato, P.A.
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Baltimore, MD 21286-2230

Mr. Scott Cowan, President
International Longshoremen's
Association, Local No. 333
6610B Tributary Street, Suite 202
Baltimore, MD 21224-6516



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Fax: (410)962-2198

October 31, 2018

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

Re: Service Employees International Union, Local 32BJ
(Whelan Security Corporation)
Case 05-CB-226007

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

We have carefully investigated and considered your charge that Service Employees International Union, Local 32BJ (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.

Your charge alleges that the Union failed to represent you and adequately process a grievance regarding your discharge by Whelan Security Corporation (the Employer). Specifically, you allege that you asked the Union to file a grievance on your behalf and that the Union violated the Act when it refused to advance that grievance to arbitration.

The investigation revealed that following your discharge on (b) (6), (b) (7)(C) 2018, the Union filed an information request for documents related to your discharge, and attended a grievance meeting with you on (b) (6), (b) (7)(C) 2018. The investigation further revealed that the Union notified you by e-mail on (b) (6), (b) (7)(C) 2018, that it would not advance your discharge grievance to arbitration because it did not think the grievance had sufficient merit, and that the Union considered the chance of prevailing at arbitration unlikely. The Union's e-mail contained instructions on how to appeal its grievance decision to the Union's Grievance Arbitration Board (GAB).

Following the e-mail, you visited the Union's office in person to speak to a grievance representative and requested a meeting with the Union to get more information about its decision. You also requested a copy of your grievance file, which the Union sent you by mail approximately two weeks later. The Union sent you an e-mail on (b) (6), (b) (7)(C) 2018, informing you of an upcoming GAB meeting on (b) (6), (b) (7)(C) 2018, where you could appeal the Union's decision in person. The Union then sent you a letter dated (b) (6), (b) (7)(C) 2018, with that information. Not having heard back from you, the Union e-mailed you again on (b) (6), (b) (7)(C) 2018, regarding the GAB meeting. However, you did not attend the meeting and did not communicate further with the Union about your grievance.

It is well established that a union has a duty of fair representation to its members. *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953). The Supreme Court defined this duty as "a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). Unions are allowed a "wide range of reasonableness in serving unit employees, and any subsequent examination of a union's performance must be 'highly deferential'." *Letter Carriers Branch 529*, 319 NLRB 879, 880

(1995), quoting in part *Air Line Pilots Assn. v. O'Neill*, 399 U.S. 65, 78 (1991). Even if a union mishandles a grievance, it must do something that goes beyond mere negligence or poor judgment to support a finding of arbitrary conduct. *Teamsters Local 337*, 307 NLRB 437, 438 (1992).

In the instant case, having attended your grievance meeting and reviewed the documents related to your discharge, the Union made a decision that your grievance did not have a high probability of prevailing at arbitration and that, as such, it did not warrant advancing to that stage. The Union notified you of that decision and offered you an opportunity to appeal it, which you did not take. There is no evidence the Union's conduct or motivation in its decision was arbitrary, discriminatory, or in bad faith, or that the Union processed your grievance perfunctorily. Based on the foregoing, further proceedings are not warranted, and I am refusing to issue complaint in this matter.

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.

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Appeal Due Date: The appeal is due on **November 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 November 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 November 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 November 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/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure

cc: Katy Dunn, Esq.
Service Employees International Union,
Local 32BJ
25 West 18th Street
New York, NY 10011-4676

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Hyattsville, MD 20785-2236

Mr. Gabriel Calderon
SEIU, Local 32BJ
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Washington, D.C. 20005