



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.nlrb.gov
Telephone: (410) 962-2822
Fax: (410) 962-2198

Mr. Anthony Martin, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
3800 Howard Hughes Pkwy, Suite 1500
Las Vegas, NV 89169-5921

September 24, 2018

Re: International Brotherhood of Boilermakers,
Iron Shipbuilders, Blacksmiths, Forgers and
Helpers, AFL-CIO, Local Lodge No. 1999
(General Dynamics NASSCO Norfolk)
Case 05-CB-218202

Dear Mr. Martin:

We have carefully investigated and considered your charge that International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers Local Lodge 1999 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 International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Lodge No. 1999 (Local 1999) violated Section 8(b)(3) of the Act by refusing to provide information requested by General Dynamics NASSCO-Norfolk (the Employer). Specifically, the Employer requested information related to a vote by Local 1999's membership concerning the Employer's proposal to change shift times set by the parties' collective-bargaining agreement (CBA).

Article 34 (Workweek) of the parties' CBA establishes shift starting and ending times. This article permits the Employer to unilaterally alter the starting and ending times of a shift "if [the Employer] has a compelling need to do so." Further, Article 39 (Savings Clause) states that "[the CBA] constitutes the full and total Agreement of the parties with respect to all issues and cannot be modified except by an express written agreement signed by both [the Employer] and [Local 1999]." In early-2018, the Employer proposed changing starting and ending times for its first and second shifts. Local 1999 requested that the issue be put to a vote of its membership, and the Employer did not object. On about March 27, 2018, Local 1999 administered the vote at its union hall. Following the vote, Local 1999 notified the Employer, in writing, that the "proposed change was an overwhelming no vote." The following day, the Employer requested "vote totals for and against, list of eligible voters, and copies of relevant postings, notes, etc. concerning the vote." On March 29, the Employer clarified its request for information, and requested "copies of all election form sheets, tabulation results sheets and/or spreadsheets...tabulations, notes, etc. relating to the vote..." On April 6, Local 1999 summarily denied the Employer's request for information.

The investigation reveals insufficient evidence to establish that Local 1999 violated Section 8(b)(3) of the Act. Article 39 establishes that Local 1999 was not obligated to engage in midterm bargaining concerning the Employer's proposal to change shift times set by the CBA. Moreover, the Employer presented insufficient evidence to demonstrate that the requested information was relevant. The information concerning the mechanics and result of the membership vote did not relate to unit employees' terms and conditions of employment and, thus, was not presumptively relevant. Furthermore, the information was neither necessary to evaluate whether Local 1999 membership in fact rejected the Employer's proposal, nor was the information relevant to the Employer's policing of the parties' CBA. Here, Local 1999 lawfully refused to provide information concerning its internal membership vote that would assist Local 1999 in formulating its bargaining position if it wishes to bargain the issue. See, e.g., *Service Employees Local 535 (North Bay Center)*, 287 NLRB 1223, 1226-27 (1988) (union did not violate Section 8(b)(3) where requested information concerned relations between the union and its employees, and not employee wages, hours, and working conditions).

For these reasons, I have concluded that 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.

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

September 24, 2018

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 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

International Brotherhood of Boilermakers,
Iron Shipbuilders, Blacksmiths, Forgers and
Helpers, AFL-CIO, Local Lodge No. 1999
(General Dynamics NASSCO Norfolk)
Case 05-CB-218202

- 4 -

September 24, 2018

Enclosure

cc: Mr. Tim Sawyer
Union Local Vice President
International Brotherhood of
Boilermakers, Iron Shipbuilders,
Blacksmiths, Forgers and Helpers
Local Lodge 1999
301 Columbia Street, Suite B
Portsmouth, VA 23704-3709

Brandon E. Wood, Esq.
Blake & Uhlig, P.A.
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Kansas City, KS 66101-2510

Jason R. McClitis, Esq.
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Mr. Mark Phillips
Labor Relations Manager
General Dynamics NASSCO Norfolk
200 Ligon Street
Norfolk, VA 23523-1000



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September 28, 2018

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

Re: American Postal Workers Union (United
States Postal Service)
Case 05-CB-219603

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

We have carefully investigated and considered your charge that American Postal Workers Union (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 national Union violated Section 8(b)(1)(A) of the National Labor Relations Act when it refused to file and process your grievance regarding your termination from the U.S. Postal Service (the Employer) for arbitrary or discriminatory reasons or in bad faith.

The investigation revealed that during your employment with the Employer, you were represented by Union Local 2574 (the Local). The investigation also revealed that the national Union does not have the authority to file or process grievances on behalf of local chapter members. As a result, the Local was responsible for initiating the grievance process for its members, not the national Union. The investigation further revealed that the national Union cannot require the Local to file a grievance for a member, nor can the national Union initiate a grievance for a Local member. The national Union becomes involved only after the Local has initiated the grievance procedure, and the grievance is elevated to the third step in the procedure.

Because the national Union did not have a duty to file or process a grievance on your behalf, I find that it did not violate its duty to fairly represent you. Accordingly, 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 **October 12, 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 11, 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 12, 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 12, 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

September 28, 2018

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,



Nancy Wilson
Acting Regional Director

Enclosure: Appeal Form

cc: Mr. Kami Hoffman, Postmaster
United States Postal Service
44 West Franklin Street
Hagerstown, MD 21740

Roderick D. Eves, Esq.
United States Postal Service
1720 Market Street, Room 2400
St. Louis, MO 63155-9948

Ms. Pamela Richardson
Union Representative
American Postal Workers Union
4 North High Street
Baltimore, MD 21202-2120

Jeremiah Fugit, Esq.
Murphy Anderson, PLLC
1401 K Street, N.W., Suite 300
Washington, DC 20005-3422



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September 19, 2018

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

Re: International Federation of Professional and
Technical Engineers, Local 135
(Legal Services Corporation)
Case 05-CB-221322

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

We have carefully considered your charge that International Federation of Professional and Technical Engineers, Local 135 has violated the National Labor Relations Act.

Decision to Dismiss: In view of your lack of cooperation in investigating this case, I have determined that further proceedings are not warranted at this time and I am dismissing your charge. As a result, further proceedings in this matter are not warranted, and I am refusing to issue complaint.

If you wish to refile this charge later when you can cooperate in the investigation, you may do so. However, your attention is directed to Section 10(b) of the Act which provides that a charge must be filed with the NLRB and served on the charged party within six months of the conduct alleged to be unlawful

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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September 19, 2018

Appeal Due Date: The appeal is due on **October 3, 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 2, 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 3, 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 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

cc: Brian G. Esders, Esq.
Abato, Rubenstein & Abato, P.A.
809 Gleneagles Court, Suite 320
Baltimore, MD 21286-2230

Kirsten B. White, Esq.
Schwartz Hannum, P.C.
11 Chestnut Street
Andover, MA 01810

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

International Federation of Professional
and Technical Engineers, Local 135
3333 K Street, N.W., 1st Floor
Washington, D.C. 20007

Mr. James Sandman
President
Legal Services Corporation
3333 K Street, N.W.
Washington, D.C. 20007



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September 28, 2018

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

Re: UNITE HERE Local 7
(Double Tree Pikesville)
Case 05-CB-221329

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

We have carefully investigated and considered your charge that UNITE HERE Local 7 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 since in or around (b) (6), (b) (7)(C) 2018, the Union has restrained and coerced employees in the exercise of rights protected by Section 7 of the Act by refusing to fairly represent you in matters relating to a grievance over your termination for arbitrary or discriminatory reasons or in bad faith in violation of Section 8(b)(1)(A) of the Act. Specifically, you allege that the Union has failed its requirement to obtain full backpay for you based on the arbitrator's order overturning your termination.

The Region's investigation concluded that Unite Here, Local 7 processed your (b) (6), (b) (7)(C) 2016 termination through the grievance and eventually arbitration process. The evidence shows that in (b) (6), (b) (7)(C) 2017, the arbitrator ordered your reinstatement and ordered the parties to negotiate backpay on mitigating circumstances, including interim earnings and failure to mitigate damages. The evidence shows that while the Union investigated the issues related to your backpay, you provided the Union with previous tax documentation to corroborate past pay, but you failed to provide evidence of your attempt to mitigate damages by looking for jobs prior to the Union and the Employer agreeing to a backpay award to satisfy the arbitration order in (b) (6), (b) (7)(C) 2017.

The Board has held 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. *See Vaca v. Sipes*, 386 U.S. 171 (1967); *Miranda Fuel Co.*, 140 NLRB 181 (1962). However, a Union is generally afforded a wide range of discretion in the performance of its representation functions. *OPEIU, Local 2*, 268 NLRB 1353 (1984). Once a union takes a grievance to arbitration, the union becomes obligated to act as the grievant's advocate. *Teamsters Local 705 (Associated Transport)*, 209 NLRB 292 (1974). In the course of arbitration, the grievant has no special right to dictate to the union what arguments are to be made, *see Teamsters Local 542 (Golden Hill Convalescent Hosp.)*, 223 NLRB 533 (1976), or require that every possible option be exercised, *see Truck Drivers Local 35 (Monarch Institutional Foods)*, 229 NLRB 1319, 1321 (1977), *enfd.* 597 F.2d 388 (4th Cir. 1979). Rather, the union must represent the employee in a fair and neutral manner. *Union de Obreros de Cemento Mezclado (Betterroads Asphalt Corp.)*, 336 NLRB 972 (2001).

In the instant case, you have failed to present any evidence that the Union's processing and negotiation of the arbitration award was based on discriminatory or bad faith reasons. Further, the investigation did not reveal evidence that the Union's negotiation of your arbitration award was arbitrary. The evidence supports the Union's contention that it properly handled the calculation and negotiation of your backpay based on the information provided prior to the reaching of a settlement with the Employer. Accordingly, 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.

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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 12, 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 12, 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: Kristin L. Martin, Esq.
McCracken, Stemerma & Holsberry, LLP
595 Market St., Ste. 800
San Francisco, CA 94105-2813

Ms. Roxie Herbekian
President
UNITE HERE Local 7
1800 North Charles Street
Baltimore, MD 21201-5920

Mr. Nick Mangione
DoubleTree Pikesville
1726 Reisterstown Road
Pikesville, MD 21208-2974



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

September 26, 2018

Re: International Union, Security, Police and
Fire Professionals of America, Local 442
(Georgetown University)
Case 05-CB-221978

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

We have carefully investigated and considered your charge that International Union, Security, Police and Fire Professionals of America, Local 442 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. Jay Gruber, Chief of Security
Georgetown University
3700 O Street, N.W., Village C
Washington, D.C. 20057-0003

Richard M. Olszewski, Esq.
Gregory, Moore, Jeakle & Brooks, P.C.
65 Cadillac Square, Suite 3727
Detroit, MI 48226-2893

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

International Union, Security, Police and
Fire Professionals of America, Local 442
25510 Kelly Road
Roseville, MI 48066-4994



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Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
3800 Howard Hughes Pkwy, Suite 1500
Las Vegas, NV 89169-5921

September 24, 2018

Re: International Brotherhood of Boilermakers,
Iron Shipbuilders, Blacksmiths, Forgers and
Helpers, AFL-CIO (General Dynamics
NASSCO Norfolk)
Case 05-CB-223770

Dear Mr. Martin:

We have carefully investigated and considered your charge that International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers AFL-CIO 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 International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO (the International) violated Section 8(b)(3) of the Act by refusing to provide information requested by General Dynamics NASSCO-Norfolk (the Employer). Specifically, the Employer requested information related to a vote by International's Local Lodge No. 1999's (Local 1999) membership concerning the Employer's proposal to change shift times set by the collective-bargaining agreement (CBA). Although the CBA recites that it is between the Employer, International, and Local 1999, the International is not a signatory to the CBA.

Article 34 (Workweek) of the relevant CBA establishes shift starting and ending times. This article permits the Employer to unilaterally alter the starting and ending times of a shift "if [the Employer] has a compelling need to do so." Further, Article 39 (Savings Clause) states that "[the CBA] constitutes the full and total Agreement of the parties with respect to all issues and cannot be modified except by an express written agreement signed by both [the Employer] and [Local 1999]." In early-2018, the Employer proposed changing starting and ending times for its first and second shifts. Local 1999 requested that the issue be put to a vote of its membership, and the Employer did not object. On about March 27, 2018, Local 1999 administered the vote at its union hall. Following the vote, Local 1999 notified the Employer, in writing, that the "proposed change was an overwhelming no vote." The following day, the Employer requested "vote totals for and against, list of eligible voters, and copies of relevant postings, notes, etc. concerning the vote." On March 29, the Employer clarified its request for information, and requested "copies of all election form sheets, tabulation results sheets and/or spreadsheets...tabulations, notes, etc. relating to the vote..." On April 6, Local 1999 representatives summarily denied the Employer's request for information. The investigation

reveals that International (b) (6), (b) (7)(C) directed Local 1999 not to produce the requested information, though it is unclear whether Local 1999 would have refused to provide the information absent such a directive.

Assuming, but without deciding, that the International has an obligation to bargain with the Employer concerning the terms and conditions of employment of the bargaining unit covered by the CBA, the investigation reveals insufficient evidence to establish that the International violated Section 8(b)(3) of the Act. Article 39 establishes that the parties were not obligated to engage in midterm bargaining concerning issues set by the CBA. Moreover, the Employer presented insufficient evidence to demonstrate that the requested information was relevant. The information concerning the mechanics and result of Local 1999's membership vote did not relate to the unit employees' terms and conditions of employment and, thus, was not presumptively relevant. Furthermore, the information was neither necessary to evaluate whether the Local 1999 membership in fact rejected the Employer's proposal, nor was the information relevant to the Employer's policing of the parties' CBA. Here, Local 1999 lawfully refused to provide information concerning its internal membership vote that would assist Local 1999 in formulating its bargaining position if it wishes to bargain the issue. See, e.g., *Service Employees Local 535 (North Bay Center)*, 287 NLRB 1223, 1226-27 (1988) (union did not violate Section 8(b)(3) where requested information concerned relations between the union and its employees, and not employee wages, hours, and working conditions). Accordingly, the International did not violate the Act simply by directing Local 1999 not to produce the information.

For these reasons, I have concluded that 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.

September 24, 2018

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 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

International Brotherhood of Boilermakers, - 4 -
Iron Shipbuilders, Blacksmiths, Forgers and
Helpers, AFL-CIO (General Dynamics
NASSCO Norfolk)
Case 05-CB-223770

September 24, 2018

Enclosure

cc: Mr. Dwain Burnham, International Rep.
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September 28, 2018

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

Re: American Postal Workers Union, Local
2574 (United States Postal Service)
Case 05-CB-225723

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

We have carefully investigated and considered your charge that American Postal Workers Union, Local 2574 (Local or 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 Local violated Section 8(b)(1)(A) of the National Labor Relations Act when it refused to process your grievance regarding your termination from the U.S. Postal Service (the Employer) for arbitrary or discriminatory reasons or in bad faith. You allege that you suffered (b) (6), (b) (7) on (b) (6), (b) (7)(C) 2017 while working for the Employer as a (b) (6), (b) (7)(C). By a letter dated (b) (6), (b) (7)(C) 2017, the Employer notified you that you were discharged. You allege that you attempted to contact the Local multiple times after your (b) (6) and again after your discharge, seeking assistance in filing a (b) (6), (b) (7)(C) and a grievance regarding your discharge. You stated that your calls were never returned. You alleged that you saw the (b) (6), (b) (7)(C) Local, (b) (6), (b) (7)(C) at a football game in (b) (6), (b) (7)(C) 2017 and asked (b) (6) about your grievance. You alleged that although (b) (6) responded (b) (6) was working on it, you did not believe (b) (6) had filed any grievance on your behalf, nor did you believe that (b) (6) planned to.

You also alleged that you contacted a representative from the national Union, (b) (6), (b) (7) several times in (b) (6), (b) (7)(C) 2018 to ask about filing a grievance regarding your discharge. (b) (6), (b) (7) told you that no grievances had been filed by the Local on your behalf, and that (b) (6) could not require the Local to do so. (b) (6) also explained that the national Union does not have any role in the grievance process until a grievance reaches Step 3 of the grievance process. As a result, the Union could not take action on your behalf until the Local filed and processed a grievance.

Finally, although not alleged on the face of the charge, you also complained that the Local failed to file grievances on your behalf regarding workplace health and safety concerns, seniority provisions of CBA, and discriminatory assignments while you were employed by the Employer.

Section 10(b) of the Act provides in pertinent part that “no complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made.” The six month limitations period begins to run on a duty of fair representation charge when “the party filing the charge knew or should have known that an unfair labor practice has occurred[.]” *SAS Electrical Services, Inc.*, 323 NLRB 1239, 1253 (1997) (citing *Leach Corp.*, 312 NLRB 990, 991 (1993), *enfd.* 54 F.3d 802 (D.C. Cir. 1995)).

The investigation revealed that you filed a charge against the national Union on May 3, 2018, and the Union was served with the charge on May 8, 2018. You filed the charge in this case against the Local on August 15, 2018, and the Local was served with the charge on August 17, 2018. The investigation also revealed that after your (b) (6), (b) (7)(C) 2017 (b) (6), you spent several months trying to contact the Local before speaking to the Local (b) (6), (b) (7)(C) in person in (b) (6), (b) (7)(C) or (b) (6), 2017. You acknowledged that you did not believe the Local (b) (6), (b) (7)(C) alleged assurances that it was pursuing any grievances on your behalf, or that it had any plans to do so. Despite knowing at the latest by (b) (6), (b) (7)(C) 2017 that the Local had not and would not take any action on your behalf, you did not file your first charge until seven months later, and the charge against the Local until ten months later. During that time, you did not have any contact with the Local at all, and your only contact with the national Union confirmed no grievances had been filed or would be filed on your behalf. Finally, in the time since your (b) (6), (b) (7)(C) and discharge, you acknowledged that you never received any documentation from the Union or the Local indicating it was pursuing a grievance on your behalf.

I have determined that the allegations in your charge are time-barred by Section 10(b) of the Act. With regards to your request that the Union file a grievance over your discharge, I find that you knew or should have known at least by (b) (6), (b) (7)(C) 2017 that the Union was not taking action on your behalf. As a result, the Union’s alleged unlawful conduct did not occur within six months of the filing and service of your charge.

I also find that your allegations regarding the Union’s failure to file grievances on your behalf regarding workplace health and safety concerns, seniority provisions of CBA, and discriminatory assignments are time barred. Your last day of work was on or about (b) (6), (b) (7)(C) 2017, 12 months before you filed and served your first charge against the national Union, and 15 months before you filed the charge in this case. However, even if those claims were not barred, I find that the Local adequately supported its decision not to file those grievances. You acknowledged that a union representative explained to you that the Employer and Local used a reporting procedure separate from the grievance procedure to bring safety issues to the Employer’s attention. You followed that process to report numerous safety concerns, and at least some of your concerns were resolved as a result. The union representative also explained to you that the Local could not file grievances about your scheduling concerns because under the collective-bargaining agreement (CBA), (b) (6), (b) (7)(C) have no set schedule, and management has the right to assign them to whatever shifts they need to fill. In response to your complaints of discrimination, the Union representative advised you to file a complaint with the Employer’s

Equal Employment Opportunity (EEO) office, which you also did. As a result, I find that even if these allegations were not time-barred, the Union met its duty to fairly represent you.

Accordingly, 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;
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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 12, 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 11, 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.

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Very truly yours,

/s/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure: Appeal Form

cc: **(b) (6), (b) (7)(C)**

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