UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 30
310 West Wisconsin Avenue, Suite 450W
Milwaukee, WI 53203-2246

Agency Website: www.nlrb.gov
Telephone: (414)297-3861
Fax: (414)297-3880

September 28, 2018

(b) (6), (b) (7)(C)
[redacted]

Re: American Postal Workers Union, Local #0003 (USPS)
Case 18-CB-220552

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

We have carefully investigated and considered your charge that AMERICAN POSTAL WORKERS UNION, LOCAL #0003 has violated the National Labor Relations Act.

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

You allege that the American Postal Workers Union, Local #0003 (Union) restrained and coerced employees in the exercise of rights protected by Section 7 of the Act by refusing to process your grievances over standard operating procedures, safety issues, and a letter of warning for arbitrary or discriminatory reasons or in bad faith. For the reasons stated below, I am dismissing this allegation insofar as it relates to the processing of your grievance. While concluding that the processing of your grievance did not violate the Act, I also concluded that the Union's communication with you regarding the status of your grievance is a violation of the Act and therefore, I am issuing a merit dismissal regarding this conduct, as explained later in this letter.

In considering the grievances, inherent in a union's authority to negotiate and administer a contract on behalf of the employees it represents is the "discretion to make such concessions and accept such advantages as, in the light of all relevant considerations, they believe will best serve the interests of the parties represented." *Ford v. Huffman*, 345 U.S. at 337-338. If a union acts in a manner contrary to the provisions of an existing collective bargaining agreement or with invidious discrimination toward a represented employee or group of employees, it violates its duty of fair representation. *Red Ball Motor Freight, Inc.*, 157 NLRB 1237, 1244 (1966), citing *Miranda Fuel Co. Inc.*, 140 NLRB 181 (1962). But it has long been recognized that conflicts between classes of employees inevitably arise in the application of a contract and the union's resolution of such conflicts must be accorded a "wide range of reasonableness. . . subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Ford v. Huffman*, supra. Here, the evidence shows you have filed grievances, including those over alleged departures of work assignments from the Standard Operating Procedure (SOP), which also touch upon safety issues, affecting your work area. Your grievances highlight a dispute about the duties of certain classifications of employees within the bargaining unit, including drivers and expeditors, and the Union has processed these grievances. In processing the grievances the

Union obtained a class action settlement in September 2017, of which you are aware. Although admittedly occurring post the instant charge being filed, the Union also obtained and has provided you with a copy of a non-compliance settlement reached in July 2018, settling a violation of the September 2017 class action settlement. Thus, while the evidence reflects the Union did not file a grievance over every individual violation you reported, the Union did address the issues you raised but did so as a class action. Not pursuing a grievance over each reported violation, does not violate the Act. The Act does not provide an absolute right to a grievance, instead it provides broad discretion to unions with respect to grievance handling, so long as there is good faith evaluation of the requested grievance and a rational basis for decision of how to proceed or not proceed. See, e.g. *Pacific Maritime Assn*, 321 NLRB 822, 823 (1996). . The Union's class action resolution also does not provide the financial remedy you believe is owed, as the Union disagrees with your assessment that the Employer's SOP violations and non-compliance merits a settlement in the tens of thousands of dollars. The Union's decision to accept the above-mentioned settlements rather than seek your suggested monetary remedy is within its "wide range of reasonableness" and does not provide a basis for issuing a complaint.

With regard to your grievance over a 2016 letter of warning, while you may have believed the grievance was still pending as of 2018, the evidence fails to establish the Union had clear notice of your intent to file a grievance over your discipline. You report you filed a grievance request, but the Union does not have a record of said request. Therefore, the evidence fails to establish that the Union was on notice of the grievance or willfully refused to consider your request. In this regard, it is noted that the Union has an established, reasonable procedure for recording grievances and has recorded the other grievances you and others have filed. Given the Union's willingness to file your grievances addressing other matters you have raised, it does not follow that the Union intentionally did not file on your discipline nor does it rise above "mere negligence". *Teamsters Local 692 (Great Western Unifreight)*, 209 NLRB 446 (1974). Additionally, even assuming the Union's failure rose above "mere negligence" and that your charge is timely[1], it would not effectuate the Act to pursue that aspect of the charge since pursuant to the terms of the collective-bargaining agreement your (b) (6), (b) (7)(C) 2016 discipline would have been expunged from you record, as of (b) (6), (b) (7)(C) 2018.

Partial Conditional Decision to Dismiss: As indicated earlier, while dismissing the charge insofar as it relates to the actually processing of the grievances, I am finding arguable merit to the allegation insofar as it relates to the Union's communication with you regarding the processing of your grievances. In considering the full scope of the evidence, I have concluded that further proceedings, on the arguably meritorious portion of the allegation, are not warranted at this time. For the reasons set forth below, I have conditionally decided to dismiss your charge as it relates to the Union's failure to keep you informed of the status of your grievances for 6 months from this date.

[1] Section 10(b) of the National Labor Relations Act states, "that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board."

To find that a union did not fairly represent employees, it must be shown that the union acted arbitrarily, discriminatorily, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171 (1967). However, unions are held to a duty of fair representation which includes effectively communicating with a grievant during the course of the grievance process. *Retail Clerks Local 324 (Fed Mart Stores)*, 261 NRLB 1086 (1982). Similarly, a union's failure to provide information relating to a bargaining unit member's grievance also may violate Section 8(b)(1)(A). See *Branch 529 Letter Carriers (USPS)*, 319 NLRB 879 (1995). In considering the evidence, while I understand the Union processes a high volume of grievances, I find that the Union's failure to timely and effectively communicate with you regarding the status of your grievances, despite a number of attempts by you to obtain such information, rises to the level of arbitrary conduct. However, in this situation, the Union has provided the Region with assurances that it has received legal training on ways to improve its communication with grievants regarding the status of their grievance and that it will revise its grievance tracking system currently in place to record that such updates have been provided. No evidence has been presented demonstrating the Union's actions were the result of animosity toward you. I am therefore exercising my discretion and conditionally dismissing the allegation.

If a meritorious charge involving other unfair labor practices is filed against the Union in the next six months, I will reconsider whether further proceedings on this charge are warranted.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlrb.gov and:

1) Click on E-File Documents;
2) Enter the NLRB Case Number; and,
3) Follow the detailed instructions.

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Very truly yours,

JENNIFER A. HADSALL
Regional Director

By: /s/ Benjamin Mandelman

BENJAMIN MANDELMAN
Officer in Charge

Enclosure

cc: (b) (6), (b) (7)(C)
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September 27, 2018

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

Re: AFSCME COUNCIL 5 AFL-CIO (Lifecare Services dba Community Employment Services)
Case 18-CB-221241

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

We have carefully investigated and considered your charge that AFSCME Council 5 AFL-CIO has violated the National Labor Relations Act.

Conditional Decision to Dismiss: Your charge alleges that AFSCME Council 5 (the Union) processed your grievance over your 2014 termination arbitrarily, discriminatorily, or in bad faith in violation of Section 8(b)(1)(A) of the Act. The investigation revealed that the Union had approved the grievance for arbitration in (b) (6), (b) (7)(C) 2014. The Union subsequently provided assurances to you that it would arbitrate the grievance and that it was continuing to process your grievance as late as (b) (6), (b) (7) 2016. However, after that time the Union reassigned your grievance to staff on several occasions and the identity of the Employer also changed due to multiple changes in ownership. As a result, your grievance was not further acted upon until (b) (6), (b) (7)(C) 2017. Shortly thereafter, the Union reconsidered your grievance and decided to drop your grievance. The evidence reflects that the Union's decision to drop your grievance was not arbitrary, discriminatory, or in bad faith.

While the Union's decision to drop your grievance did not violated the Act, the Union's handling of your grievance between (b) (6), (b) (2016 and (b) (6), (b) (7)(C) 2017, as described above, arguably violated the Act. Specifically, the Union's inaction during that period arguably constituted gross negligence or perfunctory processing of your grievance in breach of the Union's duty of fair representation. However, I have decided to conditionally dismiss your charge six (6) months from this date because the Union has a grievance processing system in place which it followed here and the circumstances which resulted in your grievance being lost are unlikely to reoccur. In addition, the Union has agreed to undertake certain remedial measures, including: making changes to its system for grievance and arbitration reassignment so that grievances are not lost during transitions; promptly and effectively notifying grievants about the status of their grievances; and notifying you in writing about the reasons why it has dropped your grievance.

If a meritorious charge involving other unfair labor practices is filed against the Union in the next six months, I will reconsider whether further proceedings on this charge are warranted.

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/ Jennifer A. Hadsall

JENNIFER A. HADSALL
Regional Director

Enclosure

cc: BART ANDERSEN
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September 27, 2018

(b) (6), (b) (7)(C)
[redacted]

Re: Sheet Metal Workers Intl. Assn., Local 18, and its agents Combined Crafts Statewide Audit Program and Sheet Metal Workers' National Pension Fund
(Zien Service, Inc.)
Case 18-CB-219080

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

The Region has carefully investigated and considered the charge against Sheet Metal Workers Intl. Assn., Local 18, and its agents Combined Crafts Statewide Audit Program and Sheet Metal Workers' National Pension Fund (Union) alleging violations under Section 8 of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted inasmuch as the evidence was insufficient to establish a violation under the Act. The charge alleged that the Union restrained and coerced Zien Service, Inc., (Zien) in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances. The evidence submitted did not support this allegation.

The charge further alleged that the Union failed in its duty of fair representation of its employees by attempting to put their Employer, Zien, out of business and that the Union refused to bargain collectively and in good faith with Zien by causing Zien's fund contributions to be audited and suing for payments not duly owed under the LMRDA. Finally, the charge alleged that the Union coerced and restrained Zien because the Employer participated in NLRB proceedings.

The investigation disclosed documentary and witness evidence that established that the audit process regarding Zien's benefit fund contributions commenced prior to the time period when you were hired by Zien, and thus prior to the date that you filed unfair labor practice charges against the Union relating to your employment at Zien. Thus, the evidence did not demonstrate that the Union initiated the audit or otherwise attempted to put Zien out of business because of Zien's participation in NLRB proceedings or because it employed you.

Though not specifically alleged in the charge, you and other witnesses provided certain hearsay evidence regarding alleged unlawful statements made by Union representatives. Through the course of the investigation, evidence was adduced from witnesses with firsthand knowledge of these alleged unlawful statements, and that evidence failed to corroborate the hearsay evidence regarding the alleged unlawful statements.

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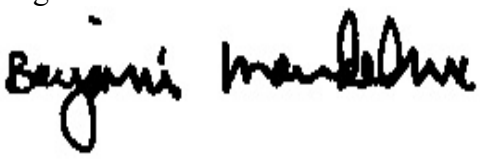
Very truly yours,

JENNIFER A. HADSALL
Regional Director

By: 

BENJAMIN MANDELMAN
Officer in Charge

Enclosure

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September 28, 2018

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

Re: UNITED STEELWORKERS
(United States Steel)
Case 18-CB-222485

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

We have carefully investigated and considered your charge that United Steelworkers 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 the Union failed to enforce the collective bargaining agreement's provisions regarding profit sharing for reasons that are arbitrary, discriminatory or in bad faith.

The Board has held that a union breaches its duty of fair representation to the bargaining unit it represents by engaging in conduct which is arbitrary, discriminatory or in bad faith. See *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). The Board examines the totality of the circumstances in evaluating whether a union's grievance processing was arbitrary. See *Office Employees Local 2*, 268 NLRB 1353, 1354-56 (1984).

In your case, the evidence reflects that the Local Union processed your grievance to the first step and then referred the matter to the (b) (6), (b) (7)(C) the Union's Negotiating Committee, consistent with the terms of the parties' collective bargaining agreement. Thereafter, the Union investigated your claims regarding the profit sharing provisions, including by making information requests and following up with the Employer regarding the information provided. In addition, the Union responded to your inquiries and communicated to you the final result of the audit. There is insufficient evidence to demonstrate the Union's conclusion were arbitrary, discriminatory or in bad faith. For these reasons, your charge is dismissed.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

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Very truly yours,

/s/ Jennifer A. Hadsall

JENNIFER A. HADSALL
Regional Director

Enclosure

cc: TOM CONWAY
UNITED STEEL, PAPER AND FORESTRY, RUBBER,
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September 17, 2018

THOMAS R. CRONE, ESQ.
VON BRIESEN & ROPER S.C.
10 E DOTY ST STE 900
MADISON, WI 53703-3390

Re: CHEMICAL & PRODUCTION WORKERS UNION, LOCAL 30, AFL-CIO (Hydraulic Fittings, Inc. DBA HFI Fluid Power Products)
Case 18-CB-222667

Dear Mr. Crone:

The Region has carefully investigated and considered the charge against the Chemical & Production Workers Union, Local 30, AFL-CIO alleging violations under Section 8 of the National Labor Relations Act.

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

The charge alleges that the Union violated Section 8(b)(1)(A) by entering into and enforcing the January 12, 2018 successor agreement with the Employer on the basis that the Union never enjoyed majority status. The Employer granted voluntary recognition of the Union dating back to December 2011 and entered into several successor agreements since that time.

I find that this matter controlled by the Supreme Court's holding in *Bryan Mfg.,* 362 U.S. 411 (1960). In *Bryan Mfg.,* the Supreme Court reversed Board and the appeals court, soundly rejecting the same arguments Charging Party now makes:

> [Where the conduct occurring within the limitations period can be charged to be an unfair labor practice only through reliance on an earlier unfair labor practice] the use of the earlier unfair labor practice is not merely 'evidentiary,' since it does not simply lay bare a putative current unfair labor practice. Rather, it serves to cloak with illegality that which was otherwise lawful. And where a complaint based upon that earlier event is time-barred, to permit the event itself to be so used in effect results in reviving a legally defunct unfair labor practice.

Id. at 417. Here, there is nothing otherwise unlawful about the Union and Employer entering into a successor bargaining agreement, nor the Union seeking to enforce that agreement. Rather, the Employer's theory of violation is premised upon the fact that it was never shown evidence of the Union's majority support, even at the time of initial recognition which occurred well outside the

10(b) period. This argument cannot stand scrutiny under the Supreme Court's holding and rationale in *Bryan Mfg.,* above.

Furthermore, I find that based on the Employer's initial recognition of the Union and its agreement to various successor agreements with the Union, during which point it never raised majority status as an issue, the Employer is estopped from now asserting that the Union never enjoyed majority status. See, e.g., *Red Coats,* 328 NLRB 204, 206 (1999).

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Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlrb.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **October 1, 2018**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than September 30, 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 1, 2018.** The request may be filed electronically through the ***E-File Documents*** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any

request for an extension of time to file an appeal received after October 1, 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,

JENNIFER A. HADSALL
Regional Director

By: /s/ Benjamin Mandelman

BENJAMIN MANDELMAN
Officer in Charge

Enclosure

cc: WILLIAM BLUMTHAL, ESQ.
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CHEMICAL AND PRODUCTION WORKERS LOCAL 30
245 FENEL LANE
HILLSIDE, IL 60162

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 30
310 West Wisconsin Avenue, Suite 450W
Milwaukee, WI 53203-2246

Agency Website: www.nlrb.gov
Telephone: (414)297-3861
Fax: (414)297-3880

September 27, 2018

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

Re: International Association of Machinists and Aerospace Workers District Lodge 10
(Milwaukee Cylinder)
Case 18-CB-222877

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

We have carefully investigated and considered your charge that International Association of Machinists and Aerospace Workers District Lodge 10 has violated the National Labor Relations Act.

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

You allege the International Association of Machinists and Aerospace Workers, District No. 10 (Union), violated its duty of fair representation by refusing to process grievances regarding various work issues for arbitrary and discriminatory reasons, or in bad faith, and by disparaging and threatening you with physical harm.

It is well established law that unions are afforded a wide range of reasonableness with respect to their duty to represent employees and with respect to processing and arbitrating grievances. See *Airline Pilots Assoc., Int'l v. O'Neill,* 499 U.S. 65, 78, 111 S.Ct. 1127, 1136 (1991). To find that a union did not fairly represent employees, it must be shown that the union acted arbitrarily, discriminatorily, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171 (1967). With regard to each of the grievances or questions raised, the Union met with you on grievances and provided you with assistance in the contractual grievance process. This included providing you with the appropriate forms to file grievances and attempting to explain to you the contractual definition of a grievance.

You state that you primarily remain dissatisfied with the Union's 2016 decision to not proceed with a grievance over a job posting, which you refiled in (b) (6), (b) (7)(C) 2018. Section 10(b) of the National Labor Relations Act states, "that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." Your grievance was considered by the Union, including having legal counsel review it, and the Union informed you of its decision not to pursue that grievance by letter in [redacted] 2016. Therefore, despite the refilling of that grievance, you had knowledge of the Union's decision to not pursue that grievance well outside of the 10(b) period.

Finally, the Union responded to your concerns and accommodated your request to avoid contact with [redacted], after a [redacted] 2018 meeting and interaction, which you may or may not have interpreted as a threat. While the interaction clearly created tension between you and [redacted], the Union has made other representatives, including the Union's [redacted] available to you since that time, including addressing your pay concerns in [redacted] 2018 with the Employer. You did not file any additional grievances between [redacted] 2018 and [redacted] 2018, the month of your resignation from the Employer.

Therefore, I have concluded that further proceedings are not warranted.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlrb.gov and:

1) Click on E-File Documents;
2) Enter the NLRB Case Number; and,
3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlrb.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **October 11, 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 10, 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 11, 2018.** The request may be filed

electronically through the ***E-File Documents*** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after October 11, 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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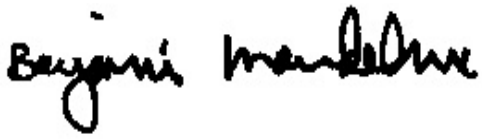
Very truly yours,

JENNIFER A. HADSALL
Regional Director

By: 

BENJAMIN MANDELMAN
Officer in Charge

Enclosure

cc: (b) (6), (b) (7)(C)
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Cudahy, WI 53110-2456

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(b) (6), (b) (7)(C)
International Association of Machinists and Aerospace
Workers District Lodge 10
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Rick Mickschl, Grand Lodge Representative
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& Aerospace Workers, AFL-CIO
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