



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlr.gov
Telephone: (602)640-2160
Fax: (602)640-2178

July 24, 2018

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

Re: Amalgamated Transit Union Local 1433
(First Transit, Inc.)
Case 28-CB-218871

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

We have carefully investigated and considered your charge that Amalgamated Transit Union Local 1433 (the Union) has violated the National Labor Relations Act (the Act).

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

Your charge alleges that the Union violated Section 8(b)(1)(A) of the Act by breaching its duty of fair representation by failing to accept, process, and/or inform employees of the status of their grievances.

A union has broad discretion in the handling of grievances and will only be found to have breached its duty of fair representation when its conduct is "arbitrary, discriminatory or in bad faith." *Vaca v. Sipes*, 386 U.S. 171 (1967). A union's decision not to pursue a grievance based on its assessment that the conduct at issue did not violate the collective-bargaining agreement will not amount to a breach of the duty of fair representation. *Hotel & Restaurant Employees Local 64 (HLJ Management)*, 278 NLRB 773 (1986); *General Motors Corp.*, 297 NLRB 31 (1989).

The evidence presented during the investigation of your charge shows that, at a time when you were on (b) (6), (b) (7)(C), First Transit, Inc. (the Employer) sent you a letter placing you on a leave of absence. You contend that the Union should have filed a grievance about your being placed on a leave of absence because you did not request to be placed on a leave of absence. The Union asserts that it did not file a grievance about your placement on a leave of absence because the Employer and the Union interpret the collective-bargaining agreement to provide for placement of employees on (b) (6), (b) (7)(C) leave upon (b) (6), (b) (7)(C) a (b) (6), (b) (7)(C), in order to protect (b) (6), (b) (7)(C) employees

from discipline or discharge for failing to come to work. When the Union informed you of its decision not to pursue grievances concerning the issues you brought to its attention by letter dated (b) (6), (b) (7)(C) 2018, it invited you to contact the Union if it had misunderstood the facts and circumstances supporting your grievance or the nature of your grievance, and you did not subsequently attempt to further discuss the matters you had raised with the Union. In these circumstances, I cannot find that the Union's decision not to pursue a grievance about the issues you raised was arbitrary, discriminatory, or in bad faith.

I am, therefore, 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 SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

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

Appeal Due Date: The appeal is due on **August 7, 2018**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than August 6, 2018. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before August 7, 2018**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to

July 24, 2018

(202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after August 7, 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/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

Enclosure

cc: First Transit, Inc.
405 North 79th Avenue
Phoenix, AZ 85043

Melissa A. Hailey, Attorney at Law
FirstGroup America, Inc.
13200 Crossroads Parkway North, Suite 450
City of Industry, CA 91746-3480

Amalgamated Transit Union, Local 1433
11024 North 28th Drive, Suite 185
Phoenix, AZ 85029-4384

Gerald Barrett, Attorney at Law
Ward Keenan & Barrett, P.C.
2141 East Camelback Road, Suite 100
Phoenix, AZ 85016-4723

CAO/FJA/lg



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlr.gov
Telephone: (602)640-2160
Fax: (602)640-2178

July 31, 2018

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

Re: International Union of Electronic, Electrical,
Salaried Machine and Furniture Workers-
CWA AFL-CIO and its Local 87223
(Peraton Inc.)
Case 28-CB-219797

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

We have carefully investigated and considered your charge that International Union of Electronic, Electrical, Salaried Machine and Furniture Workers- CWA AFL-CIO and its Local 87223 (the Union) has violated the National Labor Relations Act (the Act).

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

Your charge alleges that the Union violated Section 8(b)(1)(A) of the Act by threatening to retaliate against employees if they did not join or support the Union and by refusing to process grievances for arbitrary or discriminatory reasons or in bad faith. Additionally, your charge alleges that the Union violated Section 8(b)(3) of the Act by failing and refusing to bargain in good faith with Peraton Inc. (the Employer). The evidence obtained during the investigation of your charge does not establish a violation of the Act.

Regarding your alleged unlawful treatment by the Union, the investigation did not reveal that the Union fined you, threatened to discharge you, or threatened you with physical violence. Sometime in (b) (6), (b) (7)(C) 2018, the Union's (b) (6), (b) (7)(C) told you that (b) (6) was going to remove you as (b) (6), (b) (7)(C). On (b) (6), (b) (7)(C) 2018, you filed internal Union complaints against the (b) (6), (b) (7)(C), and on (b) (6), (b) (7)(C) 2018, the (b) (6), (b) (7)(C) suspended you from your position as (b) (6), (b) (7)(C). On (b) (6), (b) (7)(C) 2018, the Union, in response to your complaint, found the suspension unwarranted and imposed a five month probation on the (b) (6), (b) (7)(C). On (b) (6), (b) (7)(C) 2018, you filed another internal Union complaint against the (b) (6), (b) (7)(C) but on (b) (6), (b) (7)(C) 2018, the Union found no additional internal Union violations and imposed no additional discipline on the (b) (6), (b) (7)(C). Finally, on (b) (6), (b) (7)(C) 2018, you resigned from your position as (b) (6), (b) (7)(C). Under these circumstances, the dispute over the selection and retention of a (b) (6), (b) (7)(C) is a wholly internal Union matter and is not considered a violation of Section 8(b)(1)(A) of the

Act. See *Office and Professional Employees International Union, Local 251, AFL-CIO (Sandia Corp. d/b/a Sandia National Laboratories)*, 331 NLRB 1417 (2000).

You also allege that the Union has failed to represent you regarding various matters at work. On March 18, 2018, you and the (b) (6), (b) (7) had a conversation about whether or not an employee should work overtime and the (b) (6), (b) (7) did not agree with your position. The investigation revealed the details of this conversation to be an internal union dispute between (b) (6), (b) (7)(C) as to the proper interpretation of the collective bargaining agreement's overtime provisions. This dispute did not affect your employment relationship with the Employer because you were not the employee whom the Employer attempted to force to work overtime. In addition, your employment with the Employer was not affected by the contrary position taken by the (b) (6), (b) (7)(C).

The investigation also revealed that on March 22, 2018, an Employer supervisor told you to amend your time cards after a discussion with his peers and Union officers showed him that the work day begins at "minutes 25" and that the Department of Labor considers this as "waiting to engage." The supervisor also stated that "minutes 25" is the agreed upon start between management and the Union and is stated in the collective bargaining agreement. As with the overtime dispute, this dispute is one between Union (b) (6), (b) (7)(C) over the interpretation of the collective bargaining agreement that does not rise to being an unfair labor practice.

You also allege that the Union refused to process your grievances and those of other employees. The evidence revealed from the investigation does not support this allegation. On (b) (6), (b) (7)(C), 2017, the Union filed a grievance regarding the Employer allegedly forcing you to use advanced time off and ordering you to use paid time off in excess of 40 hours per week over 30 days in advance. The Union granted the Employer an extension of time for its response until (b) (6), (b) (7)(C) 2018. On (b) (6), (b) (7)(C), 2018, the Union filed a grievance on your behalf regarding you filing an OSHA report about the height of monitors. On (b) (6), (b) (7)(C) 2018, the Union and the Employer agreed to settle your paid time off grievance. On (b) (6), (b) (7)(C) 2018, OSHA inspected the job site, found no violations, and issued no citations. On (b) (6), (b) (7)(C) 2018, the Union and the Employer settled your OSHA grievance.

On (b) (6), (b) (7)(C) 2018, the Union filed a grievance on an employee's behalf regarding the Employer allegedly assigning a non-bargaining unit employee a satellite condition (Satcon) task without first offering the task to a bargaining unit employee. On (b) (6), (b) (7)(C) 2018, the Union and the Employer agreed to settle the grievance. On (b) (6), (b) (7)(C) 2018, the Union filed a grievance on your behalf regarding automated gates and employees having to manually badge in and open the gate. On the same date, a steward emailed the grievance to the Union's executive board and it is currently pending. Although you allege that certain emails that were sent to you by the Union on April 22, 2018 demonstrated the Union's failure to represent employees, the discussions in the e-mails involved an internal union dispute regarding how to prosecute grievances. Based on the foregoing, the evidence is insufficient to support a conclusion that the Union has acted arbitrarily, discriminatorily, or in bad faith with regard to

its handling of your grievances or the grievances of other employees. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967).

Lastly, the charge also alleges the Union violated Section 8(b)(3) of the Act by failing to bargain in good faith with the Employer. Section 8(b)(3) of the Act implicates the bargaining relationship the Union has with the Employer. As such, this allegation can only be raised by the Employer or an agent of the Employer against the Union and not by an individual employee.

Based on the foregoing, I am refusing to issue complaint on 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 **August 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 August 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 August 14, 2018**. The request may be filed

July 31, 2018

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 August 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.

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/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

Enclosure

cc: International Union of Electronic, Electrical,
Salaried Machine and Furniture Workers-CWA
AFL-CIO and its Local 87223
P.O. Box 13323
Las Cruces, NM 88013

Robert F. Holt, Attorney at Law
IUE-CWA, the Industrial Division of the
Communication Workers of America, AFL-CIO
2701 Dryden Road
Dayton, OH 45439-1684

Mike Tayler, Operations Supervisor
Peraton Inc.
12400 Nasa Road, Building T2
Las Cruces, NM 88012-1000

CAO/RM/sebj

International Union of Electronic, Electrical, - 5 -
Salaried Machine and Furniture Workers-
CWA AFL-CIO and its Local 87223
(Peraton Inc.)
Case 28-CB-219797

July 31, 2018

cc: International Union of Electronic, Electrical,
Salaried Machine and Furniture Workers-CWA
AFL-CIO and its Local 87223
P.O. Box 13323
Las Cruces, NM 88013

Robert F. Holt, Attorney at Law
IUE-CWA, the Industrial Division of the
Communication Workers of America, AFL-CIO
2701 Dryden Road
Dayton, OH 45439-1684

Mike Tayler, Operations Supervisor
Peraton Inc.
12400 Nasa Road, Building T2
Las Cruces, NM 88012-1000

CAO/RM/sebj