



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

October 31, 2018

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

Re: Local Union No. 872 Laborers'
International Union of North America
(Six Star Cleaning and Carpet Service)
Case 28-CB-173225

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

We have carefully investigated and considered your charge that Local Union No. 872 Laborers' International Union of North America (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.

The charge alleges that the Union violated Section 8(b)(1)(A) of the Act by reopening a retaliatory defamation lawsuit against you and other union members in (b) (6), (b) (7)(C) because you protested and spoke to newspaper reporters about the Union's alleged discriminatory working conditions and methods and interference with member jobs with employers.

The investigation revealed that on (b) (6), (b) (7)(C) 2012, you picketed the Union training hall. Subsequently, on (b) (6), (b) (7)(C) 2012, the Union and Union (b) (6), (b) (7)(C) filed a lawsuit in (b) (6), (b) (7)(C) against you, (b) (6), (b) (7)(C) and unnamed Does, alleging slander in statements you made and seeking, among other things, damages for defamation and emotional distress, punitive damages; costs; and attorney fees. Thereafter, you and (b) (6), (b) (7)(C) sought to remove the action to federal district court. The federal district court remanded the case to state court on (b) (6), (b) (7)(C), 2014. You participated in picketing at the Union's training facility in (b) (6), (b) (7)(C) 2015, as well as at the Union hall on (b) (6), (b) (7)(C), 2015. Thereafter, the Union and (b) (6), (b) (7)(C) sought to reopen (b) (6), (b) (7)(C) in state court. On (b) (6), (b) (7)(C) 2018, the Union and (b) (6), (b) (7)(C) requested that its state court lawsuit be dismissed with prejudice, based on a settlement by the parties. The investigation revealed that your insurance carrier, Nationwide, settled the case, over your objection, by payment to the Union of the sum of \$5,000, which was permitted by your insurance policy.

The Board cannot decide that a suit is baseless by making credibility determinations when genuine issues of material fact or state law exist. *BE & K Construction v. NLRB*, 536 U.S. 516, 526-527 (2002) (citing *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983)). As to completed litigation, the Board cannot find unfair labor practice liability for an unsuccessful retaliatory lawsuit unless that suit was also objectively baseless. *Id.* at 529-535. To be objectively baseless, the lawsuit must lack both an objective and subjective basis. *Id.* at 533-534. However, where a plaintiff intends to stop conduct reasonably believed to be illegal, the suit is both objectively and subjectively genuine. *Id.* at 534. The Board subsequently held that the “filing and maintenance of a reasonably based lawsuit does not violate the Act, regardless of whether the lawsuit is ongoing or is completed, and regardless of the motive for initiating the lawsuit. *BE & K Construction Co.*, 351 NLRB 451, 456 (2007). The Board further held that a “lawsuit lacks a reasonable basis, or is ‘objectively baseless,’ if ‘no reasonable litigant could realistically expect success on the merits.’” *Id.* at 457.

A lawsuit enjoys protection under the First Amendment if the plaintiff reasonably believes that the acts at issue are unprotected and illegal, even though the suit may attack activity that is ultimately determined to be protected. *BE & K Construction v. NLRB*, 536 U.S. 516, 530-534 (2002), citing *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1993); *In re BE & K Construction Co.*, 351 NLRB 451 (2007). The investigation did not reveal any statements from the Union that it filed its lawsuit to force you to incur legal costs when there was no basis for filing or proceeding with the lawsuit. To the contrary, the evidence establishes that there was arguable merit to the suit as reflected by the cash settlement reached between the Union and your insurance carrier. While it could be argued that it was the insurance carrier, and not you, who settled the matter and that the settlement was done solely to avoid the cost of litigation, none of these factors suggest or are sufficient to establish that the lawsuit was not reasonably based or was brought for a retaliatory purpose.

I am, therefore, 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 **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.

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

Local Union No. 872 Laborers'
International Union of North America
(Six Star Cleaning and Carpet Service)
Case 28-CB-173225

- 4 -

October 31, 2018

cc: Tommy White
Business Manager
Local Union No. 872 Laborers'
International Union of North America
2345 Red Rock Street
Las Vegas, NV 89146

David A. Rosenfeld, ESQ.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-6430

Jacob Houmand
Employer Representative
Six Star Cleaning and Carpet Service
7345 South Durango Street, Suite 105
Las Vegas, NV 89113-3608

CAO/CJG/dmm



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October 31, 2018

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

Re: Local Union No. 872 Laborers'
International Union of North America
(Step by Step Cleaning)
Case 28-CB-173575

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

We have carefully investigated and considered your charge that Local Union No. 872 Laborers International Union of North America (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.

The charge alleges that the Union violated Section 8(b)(1)(A) of the Act by filing a retaliatory defamation lawsuit against you and another union member in (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) because of your picketed and protested the commission of alleged discriminatory labor practices by the Union, including alleged discriminatory maintenance of the hiring hall and talking to a newspaper reporters to alert the public concerning the Union's alleged discriminatory working conditions, methods, and the interference with members jobs with employers.

The investigation revealed that you participated in picketing at the Union's training facility in (b) (6), (b) (7)(C) 2015 as well as at the Union hall on (b) (6), (b) (7)(C) 2015. The investigation also revealed that on (b) (6), (b) (7)(C) 2015, the Las Vegas Review Journal published an article with (b) (6), (b) (7)(C) you and (b) (6), (b) (7)(C) at a town hall meeting held on (b) (6), (b) (7)(C) 2015. (b) (6), (b) (7)(C) is quoted as saying (b) (6), (b) (7)(C)

You allegedly said (b) (6), (b) (7)(C)

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

On (b) (6), (b) (7)(C) 2015, the Union and Union (b) (6), (b) (7)(C) filed a lawsuit in (b) (6), (b) (7)(C) against you (b) (6), (b) (7)(C) and unnamed Does, alleging slander in statements you made and seeking, among other things, damages for defamation and emotional distress, punitive damages; costs; and attorney fees. You and (b) (6), (b) (7)(C) represented yourselves in the lawsuit, and you were directed to file an answer to the complaint. You failed to do so, and the court entered a default judgment against you on (b) (6), (b) (7)(C) 2016.

On (b) (6), (b) (7)(C) 2017, you notified you (b) (6), (b) (7)(C) insurance carrier, American Strategic Insurance Corp. (ASI) of the lawsuit, and, on (b) (6), (b) (7)(C) 2017, the law firm representing ASI filed a Motion to Set Aside the Default Judgment which was subsequently denied on (b) (6), (b) (7)(C) 2017. On (b) (6), (b) (7)(C) 2018, the court entered a default judgment against you and (b) (6), (b) (7)(C) totaling \$11,987.87 (\$6,190.27 in costs, \$5,000 in damages and \$797.60 in future costs). The court entered this judgment on (b) (6), (b) (7)(C) 2018, but you have continued to contest the amount by, among other things, having the judge recused. The court denied your motion for recusal as moot on (b) (6), (b) (7)(C) 2018.

The Board cannot decide that a suit is baseless by making credibility determinations when genuine issues of material fact or state law exist. *BE & K Construction v. NLRB*, 536 U.S. 516, 526-527 (2002) (citing *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983)). As to completed litigation, the Board cannot find unfair labor practice liability for an unsuccessful retaliatory lawsuit unless that suit was also objectively baseless. *Id.* at 529-535. To be objectively baseless, the lawsuit must lack both an objective and subjective basis. *Id.* at 533-534. However, where a plaintiff intends to stop conduct reasonably believed to be illegal, the suit is both objectively and subjectively genuine. *Id.* at 534. The Board subsequently held that the "filing and maintenance of a reasonably based lawsuit does not violate the Act, regardless of whether the lawsuit is ongoing or is completed, and regardless of the motive for initiating the lawsuit. *BE & K Construction Co.*, 351 NLRB 451, 456 (2007). The Board further held that a "lawsuit lacks a reasonable basis, or is 'objectively baseless,' if 'no reasonable litigant could realistically expect success on the merits.'" *Id.* at 457.

A lawsuit enjoys protection under the First Amendment if the plaintiff reasonably believes that the acts at issue are unprotected and illegal, even though the suit may attack activity that is ultimately determined to be protected. *BE & K Construction v. NLRB*, 536 U.S. 516, 530-534 (2002), citing *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1993); *In re BE & K Construction Co.*, 351 NLRB 451 (2007). The investigation did not reveal any statements from the Union that it filed its lawsuit to force you to incur legal costs when there was no basis for filing or proceeding with the lawsuit. It would be difficult to determine that the lawsuit was unsuccessful given that the Union obtained a default judgment against you in addition to an award of damages and costs. Further, your insurance carrier sought to set aside the default judgment. While it could be argued that the default judgment fails to establish that the lawsuit was successful, without more, this does not suggest or establish that the lawsuit was not reasonably based or was brought for a retaliatory purpose.

I am, therefore, 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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Very truly yours,

/s/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

Enclosure

cc: Tommy White, Business Manager
Local Union No. 872 Laborers'
International Union of North America
2345 Red Rock Street
Las Vegas, NV 89146-3157

David A. Rosenfeld, ESQ.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-6430

Step By Step Cleaning
2116 Fred Brown Drive
Las Vegas, NV 89106-2458

CAO/CJG/dmm



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October 31, 2018

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

[Redacted]

Re: Local Union No. 872 Laborers'
 International Union of North America
 (No Employer Named)
 Case 28-CB-173596

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

We have carefully investigated and considered your charge that Local Union No. 872 Laborers' International Union of North America (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.

The charge alleges that the Union violated Section 8(b)(1)(A) of the Act by filing a retaliatory defamation lawsuit against you in (b) (6), (b) (7)(C) and breaching the Union's alleged compliance requirement in National Labor Relation Board (Board) case 28-CB-118809, because you filed a charge and provided (b) (6), (b) (7)(C), (b) (7)(D) of alleged discriminatory hiring hall practices with the Board in case 28-CB-065507, because you picketed and protested the commission of alleged discriminatory labor practices by the Union, including alleged discriminatory maintenance of the hiring hall and talking to a newspaper reporters to alert the public concerning the Union's alleged discriminatory working conditions, methods, and the interference with members jobs with employers.

The investigation revealed that you participated in picketing at the Union's training facility in (b) (6), (b) (7)(C) 2015, as well as at the Union hall on (b) (6), (b) (7)(C) 2015. The investigation also revealed that on (b) (6), (b) (7)(C) 2015, the Las Vegas Review Journal published an article (b) (6), (b) (7) (b) (6), (b) (7)(C) you and (b) (6), (b) (7)(C) t a town hall meeting held on (b) (6), (b) (7)(C), 2015.

You are (b) (6), (b) (7)(C)
 (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) allegedly said (b) (6), (b) (7)(C)
 (b) (6), (b) (7)(C)

[Redacted]

On (b) (6), (b) (7)(C) 2015, the Union and Union (b) (6), (b) (7)(C) filed a lawsuit in (b) (6), (b) (7)(C) against you, (b) (6), (b) (7)(C), and unnamed Does, alleging slander in statements you made and seeking, among other things, damages for defamation and emotional distress, punitive damages; costs; and attorney fees. You and (b) (6), (b) (7)(C) represented yourselves in the lawsuit, and on (b) (6), (b) (7)(C) 2016, you filed an answer. The court subsequently granted the Union's motion to strike your answer on (b) (6), (b) (7)(C), 2017. On (b) (6), (b) (7)(C), 2018, the court entered a default judgment against you and (b) (6), (b) (7)(C) totaling \$11,987.87 (\$6,190.27 in costs, \$5,000 in damages and \$797.60 in future costs). The court entered this judgment on (b) (6), (b) (7)(C) 2018.

The Board cannot decide that a suit is baseless by making credibility determinations when genuine issues of material fact or state law exist. *BE & K Construction v. NLRB*, 536 U.S. 516, 526-527 (2002) (citing *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983)). As to completed litigation, the Board cannot find unfair labor practice liability for an unsuccessful retaliatory lawsuit unless that suit was also objectively baseless. *Id.* at 529-535. To be objectively baseless, the lawsuit must lack both an objective and subjective basis. *Id.* at 533-534. However, where a plaintiff intends to stop conduct reasonably believed to be illegal, the suit is both objectively and subjectively genuine. *Id.* at 534. The Board subsequently held that the "filing and maintenance of a reasonably based lawsuit does not violate the Act, regardless of whether the lawsuit is ongoing or is completed, and regardless of the motive for initiating the lawsuit. *BE & K Construction Co.*, 351 NLRB 451, 456 (2007). The Board further held that a "lawsuit lacks a reasonable basis, or is 'objectively baseless,' if 'no reasonable litigant could realistically expect success on the merits.'" *Id.* at 457.

A lawsuit enjoys protection under the First Amendment if the plaintiff reasonably believes that the acts at issue are unprotected and illegal, even though the suit may attack activity that is ultimately determined to be protected. *BE & K Construction v. NLRB*, 536 U.S. 516, 530-534 (2002), citing *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 508 U.S. 49 (1993); *In re BE & K Construction Co.*, 351 NLRB 451 (2007). Further, no testimony has been presented indicating that the sole motivation for the Employer's claims were to retaliate against the Union's protected actions. The investigation did not reveal any statements from the Union that it filed its lawsuit to force you to incur legal costs when there was no basis for filing or proceeding with the lawsuit. It is difficult to determine that the lawsuit was unsuccessful given the Union obtained a default judgment against you in addition to an award of damages and costs. While it could be argued that the default judgment fails to establish that the lawsuit was successful, without more, this does not suggest or establish that the lawsuit was not reasonably based or was brought for a retaliatory purpose.

I am, therefore, refusing to issue complaint in this matter.

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International Union of North America
(No Employer Named)
Case 28-CB-173596

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October 31, 2018

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: David A. Rosenfeld, ESQ.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-6430

Local Union No. 872 Laborers'
International Union of North America
2345 Red Rock Street, Suite 330
Las Vegas, NV 89146

CAO/CJG/dmm



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October 31, 2018

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

Re: American Postal Workers Union,
Local 380, AFL-CIO
(United States Postal Service)
Case 28-CB-224008

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

We have carefully investigated and considered your charge that American Postal Workers Union, Local 380, AFL-CIO (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 violated Section 8(b)(1)(A) of the Act by failing and refusing to file and process your grievances related to leave request and out of schedule pay, and by failing, refusing, and delaying in providing you with copies of requested information for arbitrary or discriminatory reasons or in bad faith or because of personal animosity. The evidence obtained during the investigation of your charge does not establish a violation of the Act.

The investigation revealed that during the first week of (b) (6), (b) (7)(C) 2018, you asked a Union steward to file leave request and out of schedule grievances for you. Subsequently, on (b) (6), (b) (7)(C) 2018, you followed up with the steward, who had since been (b) (6), (b) (7)(C) position, and asked (b) (6), (b) (7)(C) about the status of the grievances. The (b) (6), (b) (7)(C) steward informed you that (b) (6), (b) (7)(C) had not filed the grievances. That same date, you inquired with another Union official about filing the grievances, and on (b) (6), (b) (7)(C) 2018, the second Union official informed you (b) (6), (b) (7)(C) would file them. On the same date, you sent by facsimile an information request to the Union asking it submit a document request to the United States Postal Service (the Employer) for clock rings, leave forms, schedules, and bid job numbers and descriptions. On (b) (6), (b) (7)(C) 2018, the Union filed your request with the Employer. On (b) (6), (b) (7)(C) 2018, the Union and the Employer met on your grievances at Step 1. On (b) (6), (b) (7)(C) 2018, the Union received the requested information from the Employer. On (b) (6), (b) (7)(C) 2018, the Union and the Employer settled the leave grievance and settled, in part, the out of schedule grievance, appealing the remaining unsettled portion to Step 2. On (b) (6), (b) (7)(C) 2018, the Union mailed you the information that you wanted requested from the Employer.

Although the steward initially failed to file your grievances in (b) (6), (b) (7)(C) 2018, the evidence establishes that once the second Union official was informed of this, (b) (6), (b) (7)(C) promptly filed them,

settled one, and partially settled and partially appealed the other to Step 2. Moreover, the information that you requested from the Union was not in its possession at the time of your request. Rather, after receiving the information request, the Union took steps to gather the requested information from the Employer and provide it to you. As such, 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 information requests. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). I am, therefore, refusing to issue a complaint on this charge.

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October 31, 2018

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/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

Enclosure

cc:

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

American Postal Workers Union, Local 380, AFL-CIO
P.O. Box 25163
Albuquerque, NM 87125-0163

Roderick D. Eves, Deputy Managing Counsel
United States Postal Service (Law Dept. - NLRB Unit)
1720 Market St.
Rm 2400
St. Louis, MO 63155-9948

United States Postal Service
1135 Broadway Blvd NE
Albuquerque, NM 87101-9950



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

October 17, 2018

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

Re: UNITE HERE Bartenders' and Beverage
Dispensers' Union Local 165 (Park MGM)
Case 28-CB-224395

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

We have carefully investigated and considered your charge that UNITE HERE Bartenders' and Beverage Dispensers' Union Local 165 (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 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.

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Appeal Due Date: The appeal is due on **October 31, 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 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 31, 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 31, 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/ Barbara B. Baynes

Barbara B. Baynes
Acting Regional Director

Enclosure

cc: See next page.

UNITE HERE Bartenders' and Beverage - 3 -
Dispensers' Union Local 165 (Park MGM)
Case 28-CB-224395

October 17, 2018

cc: Richard G. McCracken, Attorney at Law
 McCracken, Stemerman & Holsberry
 1630 South Commerce Street
 Las Vegas, NV 81902-2700

UNITE HERE Bartenders' and Beverage
Dispensers' Union Local 165
4825 West Nevso Drive
Las Vegas, NV 89103-3787

Park MGM
3770 Las Vegas Boulevard South
Las Vegas, NV 89109-4323

BBB/LJD/dvf



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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

October 31, 2018

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

Re: Teamsters Local 104 (ABF Freight)
Case 28-CB-225169

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

We have carefully investigated and considered your charge that Teamsters Local 104 (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 has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and 8(d) of the Act by restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, by its actions, including, but not limited to, breaching its duty of fair representation by refusing to process to arbitration a grievance concerning removal of job classifications and seniority rights for reasons that are arbitrary, discriminatory, or in bad faith, and by failing to continue in effect all the terms and conditions of a collective-bargaining agreement concerning removal of job classifications and seniority rights with your employer ABF Freight (the Employer).

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 does not breach its duty of fair representation when it refuses to process a grievance after a good faith evaluation of the merits of the grievance. *Hotel and Restaurant Employees Local 64 (HLJ Management)*, 278 NLRB 31, 32 (773, fn. 3 (1976)).

Here, the evidence establishes that the Employer decided to eliminate (b) (6), (b) (7)(C) driver positions and took the position that this did not require it to follow a contractual change of operations procedure that would require the involvement of a joint labor-management committee in hearing the reasons for the change and plans for implementation. It further took the position that the drivers whose positions were being eliminated did not have retreat rights under the collective-bargaining agreement and could not follow their work and dovetail into the line haul seniority list upon elimination of their positions.

The Union promptly objected and filed a grievance about this planned conduct, taking the position that the Employer was required to use the contractual change of operations procedure and to allow the drivers whose positions were being eliminated to follow their work and dovetail into the line haul seniority list.

The Union's grievance was heard by the National Master Freight Multi-Region National Utility Employee Review Committee, and the Employer prevailed. You subsequently filed a grievance about the effect of the Employer's action on your seniority, and the Union advised you that it had determined it lacked merit and was not going to proceed with your claim.

Here, where the Union pursued a grievance concerning the Employer's action through a hearing before the National Master Freight Multi-Region National Utility Employee Review Committee, and there is no evidence that the Union's conduct in processing the grievance or at the hearing was in any way negligent, arbitrary, discriminatory, or in bad faith, I cannot find that the Union breached its duty of fair representation. Further, the Union's conduct in objecting to the change announced by the Employer through the contractual grievance-arbitration procedure did not amount to a midterm modification of the collective-bargaining agreement that would violate Section 8(d) of the Act.

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;
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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 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/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

Enclosure

cc: Jeremy LNU, Terminal Manager
ABF Freight
5215 W Lower Buckeye Rd
Phoenix, AZ 85043-8011

Hector Rivas, Business Agent
Teamsters Local 104
1450 S 27th Ave
Phoenix, AZ 85009-6496



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004

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Telephone: (602) 640-2160
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October 31, 2018

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

Re: Teamsters Local 631
(Nevada Ready Mix Corporation)
Case 28-CB-225348

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

We have carefully investigated and considered your charge that Teamsters Local 631 (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.

You allege that the Union has engaged in unfair labor practices within the meaning of Section 8(b)(1) and (A) of the Act by refusing to process your grievance regarding preferred start times for arbitrary or discriminatory reasons or in bad faith.

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 arbitrate a grievance based on a good faith assessment of the facts or a good faith interpretation of the contract does not breach the duty of fair representation. *Transit Union Division 822*, 305 NLRB 946 (1991) (allowing membership to vote and decide not to take grievance to arbitration after being presented with all facts); *General Motors Corp.*, 297 NLRB 31 (1989); *Hotel & Restaurant Employees Local 64 (HLJ Management)*, 278 NLRB 773 (1986).

The evidence presented during the investigation of your charge showed that the Union filed a grievance on your behalf about preferred start times, took the grievance to mediation, investigated the grievance by filing a request for information with your employer and filing an unfair labor practice to obtain the information, and then decided not to pursue your grievance further based on a good faith assessment of the information it obtained and a good faith interpretation of the relevant contractual language. Although you allege that the Union's attorney never explained to you in writing the reasons for the decision not to proceed, you acknowledge that the Union advised you of that decision by telephone, and, further, the Union presented evidence indicating that it informed you in writing. Although the Union's letter to you does not

detail the reasons for not taking your grievance to arbitration, this does not rise to a breach of their duty of representation.

Accordingly, the evidence does not establish that the Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act, by breaching its duty of fair representation, as alleged.

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. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlr.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

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Very truly yours,

/s/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

Enclosure

cc: Richard G. McCracken, Attorney at Law
McCracken, Stemerma & Holsberry
1630 South Commerce Street
Las Vegas, NV 81902-2700

Teamsters Local 631
700 North Lamb Boulevard
Las Vegas, NV 89110-2307

David B. Dornak, Attorney at Law
Fisher & Phillips LLP
300 South 4th Street, Suite 1500
Las Vegas, NV 89101

Nevada Ready Mix
151 Cassia Way
Henderson, NV 89014-6616

CAO/JED/dmm