



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

September 9, 201

CORRECTED COPY

SCOTT ALVIN FONTAINE JR.
2210 RITCHIE RD
DISTRICT HEIGHTS, MD 20747-3732

Re: American Postal Workers Union (APWU)
Case 05-CB-150853

Dear Mr. Fontaine:

You appeal from the Regional Director's partial dismissal of the charge allegation that the Union violated Section 8(b)(1)(A) of the Act by distributing the proceeds of a December 11, 2014 arbitration award to employees who were not in the bargaining unit at a time when the Employer subcontracted unit work. The appeal has been carefully considered and is denied substantially for the reasons set forth in the Regional Director's letter of June 28, 2016.

The Board and courts have defined a union's duty of fair representation as the exclusive bargaining representative for employees. *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 75-78 (1991); *Miranda Fuel Co.*, 140 NLRB 181 (1982). This duty extends to all functions of the bargaining representative, including contract administration, and the distribution of proceeds from the settlement of a class action grievance. *National Association Of Letter Carriers, Branch 6070*, 316 NLRB 235 (1995); *Teamsters Local 101 (Allied Signal)*, 308 NLRB 140 (1992). In addition, "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). A statutory bargaining representative is allowed a wide range of reasonableness in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 75 (1991).

Here, the Regional Office's investigation disclosed insufficient evidence to establish that the Union's class construction pursuant to the December 2014 Arbitrator's decision and award and the Union's distribution to current members of the occupational groups was arbitrary, in bad faith, or otherwise in breach of its duty of fair representation, as alleged. Rather, the Union based its decision on legitimate considerations. These considerations included the difficulties and inherent uncertainties of reconstructing wage and hour reports for approximately 7,000 members of the occupational groups for a period approximately twenty years ago. In similar circumstances, the Board has concluded that a union's distribution of an arbitration award to

current members of the groups fell within the wide range of reasonableness afforded unions under the Act. See, e.g. *Teamsters Local 101 (Allied Signal)*, 308 NLRB 140, 146 (1992). In addition, the investigation adduced no evidence to support the speculative contention that union elections influenced the Union's decision-making concerning either the class construction or the disbursement of the arbitration award.

Accordingly, ~~while the Regional Director continues proceedings against the Employer~~ involving the amount of money retained by the Union, further proceedings as to the allegation on appeal are unwarranted.

Sincerely,

Richard F. Griffin, Jr.
General Counsel



By:

Mark E. Arbesfeld, Deputy Director
Office of Appeals

cc: CHARLES L. POSNER
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
BANK OF AMERICA CENTER,
TOWER II
100 S CHARLES ST STE 600
BALTIMORE, MD 21201

ARTHUR G. ROXAS
PARALEGAL SPECIALIST
UNITED STATES POSTAL SERVICE
(LAW DEPARTMENT- NLRB UNIT)
1720 MARKET ST RM 2400
SAINT LOUIS, MO 63155-9948

GERALD A. ROANE, POSTMASTER
UNITED STATES POSTAL SERVICE
900 BRENTWOOD RD NE
WASHINGTON, DC 20066-9201

STEVEN G. RAYMER
AMERICAN POSTAL WORKERS
UNION, AFL-CIO
1300 L ST NW
WASHINGTON, DC 20005

ANTON HAJJAR, ESQ.
MURPHY ANDERSON, PLLC
1401 K ST NW STE 300
WASHINGTON, DC 20005

JEREMIAH FUGIT, ESQ.
MURPHY ANDERSON PLLC
1401 K ST NW STE 300
WASHINGTON, DC 20005