

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: January 9, 2001

TO : Frederick J. Calatrello, Regional Director
Region 8

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Auto Workers Local 1112	536-2548
(General Motors Lordstown	536-2581-0100
Assembly Plant)	596-0440-1200
Case 8-CB-9129	737-8467-0100
	737-8467-3300

This Section 8(b)(1)(A) case was submitted for advice as to whether the Union breached its duty of fair representation by refusing to disclose to its members requested information concerning the distribution of certain lump sum grievance settlement awards.

FACTS

For many years, employees at the Employer's Lordstown (Ohio) Assembly Plant have been represented under a series of jointly-negotiated but separate labor agreements covering production unit and maintenance unit employees. The parties' current agreement was negotiated in late summer 1999 and will expire in 2003.

In 1996 and again in 1999, following the expiration of the 1993-1996 and 1996-1999 agreements, the parties entered into omnibus settlements of all then-pending grievances. The monetary portion of each settlement award was paid to the Union as a lump sum, with the understanding that the Union would thereafter distribute the funds as it saw fit. It appears that under the Union's internal procedures, lump sum awards are distributed on a zone or department basis and are based upon the recommendations of the committeemen, or stewards, for each trade. The contractual grievance-arbitration provision allows grievances to be filed by an individual either on his or her own behalf only or on behalf of a group of employees. It appears that many grievances are signed by only one employee but are filed as "group grievances" so the grievance can continue to be processed even if the original signatory grievant is no longer employed.

In the 1996 grievance adjustment, the Employer made separate lump sum awards for grievances arising under each of the collective-bargaining agreements. In the 1999

negotiations, the Employer remitted the monetary award to the Union as a single lump sum.¹ The Employer distributed more than \$250,000 to the Union under the separate maintenance unit and production unit contracts in 1996. The settlement award arising out of the 1996-1999 grievance adjustment totaled \$300,000.

Charging Party David Eardley has been employed as an electrician at the Lordstown plant since 1993 and has worked under the maintenance agreement throughout his employment. Although he has no record or specific recall of the details, Eardley has filed at least one group grievance under each of the 1993-1996 and 1996-1999 maintenance unit agreements. These grievances involved alleged breaches of a contractual provision prohibiting the use of outside contractors if inside employees in the relevant trade are not fully employed, a matter of much dispute between the Union and the Employer. Meritorious grievances are remedied through the payment of backpay for the time outside contractors were improperly used. Eardley received some money after the lump sum settlement following the expiration of the 1993-1996 maintenance contract, but cannot recall the specific amount.

In early January 2000, Eardley became concerned that the Union had not distributed any monies from the 1996-1999 grievance settlement. Eardley asked shop chairman Wilkins² to show him how the lump sum monies had been distributed in the maintenance department, Eardley's zone. Wilkins told Eardley while he could share such information, it was not yet available because the money had not yet been distributed. Shortly after this conversation, Eardley received a flyer which indicated that the Employer had paid the Union \$300,000 in settlement of those grievances that were pending at the expiration of the 1996-1999 contract.

¹ The Region has concluded that, pursuant to both the 1993-1996 and 1996-1999 negotiations over pending grievances, the Employer remitted the monies in a lump sum for distribution by the Union, rejecting the Union's claim that grievances pending at the end of the 1993-1996 contracts were settled individually. The Union appears to concede that the 1996-1999 grievances were settled on a group basis and resulted in a lump sum award.

² The shop chairman is the highest in-plant Union official. Zone committeemen serve under the shop chairman and above regular committeemen, who appear to function as first line stewards.

Unable to get information about the 1996-1999 settlement distribution, Eardley decided to look into how the 1993-1996 lump sum settlement had been distributed in the maintenance department. To this end, Eardley spoke with Wilkins' assistant, Jim Basso. Basso told him it was against Union policy to divulge that information.

In early March, Eardley telephoned UAW Region 2 representative Wickline seeking information about the 1993-1996 settlement distribution. Eardley complained that Basso had refused to provide the information. Wickline told Eardley to take the matter up with shop chair Wilkins. Later the same day, Eardley spoke with Wilkins, but apparently remained unsatisfied and continued to seek information on the 1993-1996 settlement.³ On March 10, Eardley placed a second call to Wickline. In that call, Wickline told Eardley that he was entitled to see information pertinent to a grievance. A few days later, Eardley renewed his request to Basso for 1993-1996 settlement distribution information, which Basso again denied based on Union policy. On March 15, Eardley called Wickline to report that Basso again refused to provide the information. Wickline's manner was markedly different in this telephone call and Eardley got the impression that Wickline had been in contact with Wilkins.

Also on March 15, Eardley wrote letters to Wickline and Wilkins. In the letter to Wickline, Eardley summarized these telephone conversations, noting that Wilkins and Basso had denied his requests to see documents pertaining to the 1993-1996 settlement distribution even though Wickline had told him that he was entitled to copies of the documents. The letter to Wilkins embodies Eardley's formal request for documentation of how the 1993-1996 grievance award was distributed. Eardley specifically asked for documents showing the size of the total award, how the money was dispersed to each trade and how much each of his elected representatives received from the award. Finally, Eardley wrote that on three separate occasions, Wickline stated Eardley had the right to see information concerning any grievance he was a party to.

Wickline replied to Eardley's letter the next day. He acknowledged the three prior telephone conversations with Eardley and wrote that, because he had not been involved in settling any of Eardley's grievances, in both the March 8

³ Eardley cannot recall the substance of the conversation with Wilkins, but assumes that his request was denied because he continued to seek settlement information.

and 10 calls he told Eardley to contact shop chair Wilkins. Regarding their March 15 conversation, Wickline stated that he told Eardley that while Eardley was entitled to a copy of any grievance he personally filed or any group grievance that he signed, as well as copies of the Employer's answers, Eardley should speak to shop chair Wilkins, rather than Wickline, because Wickline was not a party to the settlement in question.

Wilkins responded by letter dated March 21, reiterating that Eardley was entitled to grievance information concerning any personal grievance or any group grievance filed on his behalf but he was not entitled to grievance information concerning grievances filed on behalf of other members or groups to which he was not a party. Wilkins also wrote that he would provide information concerning any specific grievance in which Eardley was involved, provided that Eardley identify the grievance in question, by number. Wilkins disputed as inaccurate and vague Eardley's statement that the grievances settled in 1996 were lumped together and asserted that grievances were settled on their individual merits. Finally, Wilkins told Eardley he was not entitled to information about monies paid to his elected representatives because those monies involved Paragraph 21 grievances to which Eardley was not a party.⁴

In late March, Eardley was elected as a committeeman representing maintenance department employees.⁵

The 1996-1999 grievance monies were not distributed until mid-summer 2000. Thus, in late July or early August, Eardley received about \$500. He has since tried to gather information about the distribution by talking to his coworkers in his zone. Based upon these discussions, Eardley believes that the Union has distributed much less than the \$300,000 figure cited in the flyer he received in January. Eardley is also troubled by remarks made by a former zone committeeman who was involved in the distribution of the 1996-1999 settlement to the effect that

⁴ Paragraph 21 grievances involve disputes over the payment of overtime to committeemen and can only be filed by a Union representative. Eardley had asked how much his elected representatives received out of the award, which Wilkins apparently assumed was as a reference to Paragraph 21 grievances.

⁵ The precise date of the election is unknown, but it appears to have taken place after March 21.

Eardley would be "sick" if he knew how the money had been distributed. Eardley is further concerned by rumors that the negotiators mishandled the settlement of 1996-1999 grievances affecting the maintenance unit. Although Eardley, in his committeeman capacity, has been given access to documents accounting for the distribution of about half of the \$300,000 settlement, he remains concerned about the balance of the 1996-1999 award, as well as the distribution of the entire 1993-1996 settlement. Eardley's suspicion that grievance monies have not been distributed fairly was also heightened when he was recently warned by the current maintenance department zone committeeman not to share with employees information obtained in his official capacity about the distribution. Finally, Eardley is particularly interested in how much of the money from both lump sum settlements went to the elected representatives who were themselves responsible for the distribution of the settlement awards.

The instant charge, alleging the Union breached its duty of fair representation by failing to disclose how and to whom the 1996 and 1999 settlements were distributed, was filed on April 6, 2000 and amended on September 15.

ACTION

We conclude that a Section 8(b)(1)(A) complaint should issue, absent settlement, alleging that the Union unlawfully withheld information concerning the settlement of grievances arising under the expired 1993-1996 and 1996-1999 collective bargaining agreements.

It is well settled that a union owes its members fair representation but that it will be permitted a wide range of discretion in the performance of its duties.⁶ Further, a union breaches its representational duty when its conduct toward a bargaining unit member is "arbitrary, discriminatory or in bad faith."⁷ This standard has been applied to a variety of fair representation issues, including the nondisclosure of requested information to Union members.⁸

⁶ See Ford v. Huffman, 345 U.S. 330 (1953).

⁷ Vaca v. Sipes, 386 U.S. 171, 190 (1967).

⁸ See, e.g., Auto Workers Local 909 (General Motors Corp.-Powertrain), 325 NLRB 859, 865 (1998) (union unlawfully refused to account to its members for disparity in grievance settlement money distribution); Letter Carriers

Thus, in Powertrain, following an omnibus grievance adjustment and union-controlled distribution of a lump sum monetary settlement similar to the distribution process in the instant case, several employees discovered, by comparing paychecks and word-of-mouth accounts, that settlement payments varied widely from employee to employee, without any apparent correlation between the amount paid employees and their status as grievants or participants in group grievances; rumors also circulated that payouts had been manipulated to reward supporters of the shop chair and penalize his opponents. 325 NLRB at 860-862. When oral complaints to the shop chair and other union officials responsible for distributing the lump sum award failed to adduce a satisfactory explanation of the disparities, the aggrieved employees appealed to the union's executive board for a written accounting of the disbursement of the settlement monies and the criteria used to determine the amounts paid. Id. at 862-863. The executive board refused to provide the requested information and a subsequent appeal to the union's parent international failed. Accordingly, certain of the employees filed an unfair labor practice charge alleging that the settlement distribution and the denial of the

Branch 529, 319 NLRB 879, 880 (1995) (union breached duty of fair representation by refusing to supply employee with copies of a grievance); Security Officers Local 408 (South Jersey Detective Agency), 260 NLRB 419 (1982) (union obliged to provide copies of collective-bargaining agreement and health and welfare plan); Teamsters Local 282 (General Contractors), 280 NLRB 733 (1986) (union unlawfully refused to provide job referral information in the operation of an exclusive hiring hall); Security Personnel of Hospitals (Church Charity Foundation of Long Island), 267 NLRB 974, 980 (1983) (union breached fair representation duties by failing to disclose requested information regarding the status of an employee grievance). Cf. Letter Carriers Branch 47 (U.S. Postal Service), 330 NLRB No. 109, slip op. at 1 n.1 (Feb. 23, 2000) (union violated 8(b)(1)(A) by refusing to provide member with union's overtime list; Board rejected union's claim that employee sought list in order to file an 8(b)(1)(A) charge and not to support a grievance; "the test for a violation of Sec. 8(b)(1)(A) . . . does not depend upon an examination of a respondent's motivation. Rather, it depends on whether or not the respondent's statement or conduct would have a reasonable tendency to restrain or coerce an employee in the exercise of statutory rights").

accounting were each violative of Section 8(b)(1)(A). Id. at 863.

The Board affirmed the administrative law judge's conclusion that while there was insufficient evidence of arbitrary or discriminatory conduct to sustain the allegation that the settlement distribution itself was unlawful, the union's refusal to account to its members for the disparity in the amounts paid breached its duty of fair representation. 325 NLRB at 859, 865. In particular, the administrative law judge found that the union had "a duty and an obligation to inform its members of the status of their grievances inclusive of an accounting of the distribution of grievance settlement moneys, particularly in the context of such a massive group and individual grievances settlement."⁹

We conclude that the instant case is controlled by Powertrain. Eardley's suspicions regarding the 1996 and 1999 settlement distributions and his request for information about how and to whom settlement funds were distributed are strikingly similar to the concerns of and information requested by the employees in Powertrain. Hence, as in Powertrain, the Union's representational duties encompass the duty to disclose to its membership requested information about the status of the grievances, including how settlement monies were distributed. The Union's apparent willingness to disclose some grievance settlement information to Eardley, i.e., information regarding identified group or individual grievances to which he was a party and the limited information he received in his new committeeman's capacity, does not warrant a contrary result. For, under Powertrain, the duty of disclosure clearly includes the obligation to explain to affected group and individual grievants how and to whom the entire lump sum grievance settlement was distributed.¹⁰

⁹ Id. at 865. However, the ALJ explicitly found, id., that the union violated the Act by failing to provide grievants with information why "some grievants" received the payments and why there was a disparity in other payments. The ALJ then ordered the union to provide the requested information. Id. at 866. Thus, the union was ordered to provide more than information about the settlements of the grievants who asked for the information.

¹⁰ The Union argues that the judge's use of the phrase "their grievances" means that a union's disclosure obligation is limited to providing information about individual employees' own grievance settlements. This

Accordingly, the Union's repeated refusals to furnish Eardley with information about the distribution of 1996 and 1999 grievance settlement monies were unlawful.

The Union has argued that the charge is time barred. This argument is without merit. Section 10(b) is triggered when an aggrieved party knew or should have known with the exercise of reasonable diligence that his statutory rights have been violated.¹¹ The violation alleged here is the breach of the Union's obligation to provide requested grievance information, a violation which could not have occurred until a request was made. Thus, Eardley first asked for information about the 1999 distribution in January 2000, which shop chair Wilkins immediately denied. In March, Eardley began his unsuccessful quest for information about the 1996 distribution. Since the Union's unlawful denials all occurred within the limitations period of the April 6, 2000 charge, there is no time bar. The fact that much of the information Eardley sought concerns the distribution of the 1996 settlement funds well outside the 10(b) period is not to the contrary. Thus, "[i]t is well established that the Board can and will consider events transpiring more than six months before the filing of a charge to shed light on the true character of matters occurring within the limitations period, even though under Section 10(b) such conduct itself cannot constitute an unfair labor practice."¹² The 1996 distribution information

unduly strained reading of the text ignores entirely the emphasis the judge placed on the factual context, which involved the resolution of a number of individual and group grievances.

¹¹ See, e.g., Moeller Bros. Body Shop, 306 NLRB 191, 192 (1992); John Morrell & Co., 304 NLRB 896, 899 (1991), enfd. mem. 998 F.2d 7 (D.C. Cir. 1993).

¹² Camvac International Inc., 288 NLRB 816, 846 (1988), quoting Homemaker Shops, 261 NLRB 441 (1982). See generally Machinists Local 1424 (Bryan Mfg.) v. NLRB, 362 U.S. 411, 416-417 (1960) (distinguishing cases involving occurrences within the 10(b) period which "in and of themselves" constitute unfair labor practices and cases involving conduct within the 10(b) period which can be shown to be an unfair labor practice only through reliance on an earlier violation; in the first category, 10(b) would not preclude the evidentiary use of anterior events; in the second, "the use of the earlier unfair labor practice . . . serves to cloak with illegality that which was otherwise

is likely to shed light on the legitimacy of the 1999 distribution. Thus, Eardley's concerns about the 1996 distribution are relevant to and intertwined with his request for information about the 1999 distribution. The information he requested concerning the 1996 payout, including the size of the total award, how the money was dispersed to each trade and how much each elected representatives received out of the award, could serve to substantiate or assuage Eardley's suspicions concerning any patterns of distributing settlements, including the 1999 settlement.¹³

For these reasons, we conclude that a Section 8(b)(1)(A) complaint should issue, absent settlement.¹⁴

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lawful" and no violation will be found within the limitations period).

¹³ Cf. Commercial Property Services, 304 NLRB 134, 143 (1991) (where both the request for information and refusal to provide that information occurred within 6 months of the time the charge was filed, the fact that the information being sought was generated more than 6 months prior to the filing of the charge did not preclude finding a violation); Armored Transport of California, 288 NLRB 574, 575 (1988) (Board found employer statements and conduct outside the 10(b) period conveyed an inability to pay sufficient to trigger an obligation to provide the requested financial information under NLRB v. Truitt Mfg. Co. (351 U.S. 149 (1956)) and concluded the refusal to furnish such information within the 10(b) period was unlawful).

¹⁴ We note that any charge attacking the 1996 distribution itself would now be time barred.