

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

Advice Memorandum

DATE: February 13, 1996

TO : William C. Schaub, Regional Director
Region 7

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

SUBJECT: National Association of Letter Carriers, AFL-CIO
(United States Postal Service) 536-2548
Case 7-CB-10707(P)

This case was submitted to Advice on the issue of a Union's duty to provide information requested by an employee-unit member.

FACTS

Keith Kloock (the Charging Party) was fired in January 1995, and filed a grievance. An arbitrator's decision issued on June 27 and provided for Kloock's reinstatement, provided that he meet certain conditions. The Employer and Union are still working on Employer compliance with the arbitrator's decision. Kloock has also filed many charges alleging Union mishandling of his grievances.

On August 31, 1995, Kloock requested, in writing, to the Local: (1) minutes from all Branch 758 meetings from September 1994, through the present, (2) all forms, evidence statements, decisions from his grievance files since May 21, 1995, (3) copies of all written communications pertaining to Kloock from Branch 758 to the National Union, NLRB, and the Employer. On that same date, Kloock orally requested copies of his fitness for duty reports and related documents prepared by the Employer's doctor. In an October 13, 1995 memorandum from Kloock to NALC Branch 758, Kloock requested that the Union provide to another employee who had filed a internal charges against a former Local official, a copy of Kloock's written statement to the investigating committee.

On September 6, Branch President Connie Nusser informed Kloock, in writing, that the Local Union would provide him with all of the requested information. On September 28, Kloock orally renewed his request to Nusser and Branch Secretary Debbie Lower. Nusser asked Kloock what information he wanted from the files. In response, Kloock indicated that he wanted everything from his grievance

files. Nusser informed Kloock that he would not receive everything from his grievance files but did not say why. Neither Kloock nor the National Union sought to narrow the request or explore it further. To date, Kloock has not received any of the requested information from the Union. About November 27, 1995, Kloock received copies of his fitness for duty reports from the Employer. Kloock maintains that he has not received copies of his grievances or other requested information.

The National Union disclaims any responsibility for the actions of its Local and denies that it was ever directly asked for information.

It appears that Kloock has requested the above information, in part, for the purpose of pursuing an internal union charge and his reinstatement.

ACTION

Complaint should issue, absent settlement, alleging that the Union violated Section 8(b)(1)(A) by refusing to provide Kloock with contents of his grievance files including his fitness for duty report.

In Letter Carriers Branch 529¹, the Board recently held that:

A union owes all unit employees the duty of fair representation, which extends to all functions of the bargaining representative. When a union's conduct toward a unit member is either arbitrary, discriminatory, or in bad faith, it breaches its duty of fair representation. But a union must be allowed a wide range of reasonableness in serving the unit employees, and any subsequent examination of a union's performance must be 'highly deferential'. Mere negligence does not constitute a breach of the duty of fair representation. And a union's conduct is arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational. [Citations omitted].

Applying this standard, the Board held that the union arbitrarily refused to provide a unit employee with copies of her first and second step grievance forms in violation of its duty of fair representation. The Board reasoned, first, that the grievance documents specifically pertained to the

¹ 319 NLRB No. 113 (November 30, 1995).

charging party's grievance; thus, it her "legitimate general interest" in these documents was "self-evident". Second, she communicated to the union her legitimate particular interest in obtaining the documents (trying to get her job back). Third, the union did not raise a "substantial countervailing interest" in refusing to provide the charging party with copies of her settled grievance, nor did the union raise a "substantial reason" as to why it could not provide the grievance forms. And finally, the Board noted the limited number of documents and the relative ease with which the documents could have been provided.

Applying Letter Carriers, supra, and its rationale to the above case, it is clear that Kloock is entitled to information in his grievance files, including the Employer's fitness for duty report which should be contained in Kloock's grievance files. The information continues to be relevant to Kloock as he pursues his reinstatement. Although the files may be quite large, the Union has never argued that it would be unduly burdensome to provide the information. Nor did the Union state any countervailing reasons as to why it need not provide Kloock information contained in his grievance files. Thus, the Union violated its duty of fair representation to Kloock when it failed and refused to provide the above information.

However, we conclude that the Union is not obligated generally to supply Kloock with minutes of its Branch meetings or with written communications pertaining to Kloock from Branch 758 to the National Union, the NLRB and the Employer unless they are contained in his grievance file. There is nothing in Board law that requires a union generally pursuant to its duty of fair representation to supply internal union documents to members, even when members seek the information to determine if the union is treating them fairly. The Board's requirement that a union provide hiring hall registrants, members and nonmembers, with access to its hiring hall records when employees obtain employment through an exclusive hiring hall² is for the purpose of assuring that the registrants be informed about matters that directly affect their employment status. Id. Internal union documents or minutes of local union meetings are not the kind of information that generally affect directly the employment status of employees. For the same reasons, the Union did not violate Section 8(b)(1)(A) by failing to provide another employee who had filed internal charges against a former Local Union official, with a copy

² Operating Engineers, Local 324 (Michigan Chapter, AGC), 226 NLRB 587 (1976); Operating Engineers local 513 (Various Employers), 308 NLRB 1300, n.1 (1992).

of Kloock's own written memorandum to the Union's
investigating committee.


B.J.K.