



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

October 11, 2016

[REDACTED]

Re: The Logistics Company, Inc.
Case 10-CA-179891

Dear [REDACTED]

Your appeal from the Regional Director's refusal to issue complaint in Case 10-CA-179891 has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of August 30, 2016.

Contrary to your position on appeal, the [REDACTED] evidence presented does not support finding that the Employer's actions violated the National Labor Relations Act. As to your position that you were not a probationary employee, the evidence established that because you took a new position in a new bargaining unit, you were required to serve a 90-day probationary period. Even though you were first hired by the Employer in [REDACTED] your initial position was in a different unit represented by a different union. When you entered a new bargaining unit with a separate collective bargaining agreement, your seniority changed to match your start date with the new unit and as such you were considered a probationary employee. In that regard, the collective bargaining stated that discipline and terminations issued by the Employer to probationary employees cannot be grieved or arbitrated under the contract. Therefore, the Employer can discipline and terminate probationary employees at its discretion and is not obligated to follow the disciplinary procedure.

As to your contention regarding the [REDACTED] list, the evidence establishes that the Employer did not necessarily have a problem with the contents of your [REDACTED] report, but instead took issue with the fact that you failed to [REDACTED] list. The evidence demonstrated that [REDACTED] are required to submit this [REDACTED] in which they perform the [REDACTED] checks. Even though the evidence established that the Employer reminded you prior to the end of [REDACTED] that you had not yet submitted the [REDACTED] sheet, it appears that you did not provide the report until sometime in the month of [REDACTED]. The Employer also received a report that you engaged in certain conduct while working. The report about your conduct combined with your performance issues since the start of your probation established that the Employer had legitimate business reasons for your termination. Considering the probative evidence did not demonstrate that the Employer was aware that you had engaged in protected activity and did not

hold any animus against you for your prior complaints there is insufficient basis to find your termination was unlawfully motivated. Assuming that the Employer acted in part with an unlawful motive, the evidence established that based on your performance record, it would have taken the same action despite your protected conduct. Therefore, the circumstances presented do not support finding the Employer's actions violated the Act.

Although you also have referenced Case [REDACTED] in your appeal documents, the record demonstrates that the matter is still open and pending with the Region. It is thus not before us on appeal. Therefore, our determination in this matter - Case 10-CA-179891- does not impact Case [REDACTED] currently pending before the Regional Office.

Sincerely,

Richard F. Griffin, Jr.
General Counsel



By:

Mark E. Arbesfeld, Acting Director
Office of Appeals

cc: CLAUDE T. HARRELL JR.
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
233 PEACHTREE ST NE
HARRIS TOWER STE 1000
ATLANTA, GA 30303-1504

[REDACTED]
CARVER, DARDEN, KORETZKY,
TESSIER, FINN, BLOSSMAN &
AREAUX, L.L.C.
1100 POYDRAS ST STE 3100
NEW ORLEANS, LA 70163-3600

[REDACTED]
THE LOGISTICS COMPANY, INC.
3400 WALSH PKWY
FAYETTEVILLE, NC 28311-1642

kf