

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 10
(PACIFIC MARITIME ASSOCIATION)

and

Case 20-CB-216170

DEMETRIA OWENS, an individual

COUNSEL FOR THE GENERAL COUNSEL'S
BRIEF TO THE ADMINISTRATIVE LAW JUDGE

Submitted By
Joseph Richardson
Counsel for the General Counsel
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735
joseph.richardson@nlrb.gov

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF FACTS 1

 A. LOCAL 10 DENIES OWENS’ REQUEST FOR COPIES 2

 B. LOCAL 10’S SUPPOSED POLICY AGAINST PROVIDING COPIES 4

III. CREDIBILITY 5

 A. MELVIN MACKAY 5

 B. FARLESS “PETE” DAILEY 6

IV. ARGUMENT 7

 A. UNDISPUTED: LOCAL 10 DENIED MS. OWENS’ REQUEST FOR COPIES. 7

 B. LOCAL 10 WAS OBLIGATED UNDER THE DUTY OF FAIR REPRESENTATION
 TO PROVIDE MS. OWENS DOCUMENTS RELATING TO HER GRIEVANCES. 8

 C. LOCAL 10 HAS NO SUBSTANTIAL COUNTERVAILING INTEREST 11

 D. THE OFFER TO VIEW COPIES WAS INSUFFICIENT 14

V. CONCLUSION 14

PROPOSED CONCLUSIONS OF LAW APPX

TABLE OF AUTHORITIES

CASES

<i>International Automated Machines,</i> 285 NLRB 1122 (1987)	7
<i>Letter Carriers Branch 529,</i> 319 NLRB 879 (1995)	8, 9, 10, 12
<i>Letter Carriers Branch 758,</i> 328 NLRB 952 (1999)	14
<i>Local 307, National Mail Handlers Union,</i> 339 NLRB 93 (2003)	9, 10, 12
<i>OPEIU Local 251 (Sandia Corp.),</i> 331 NLRB 1417 (2000)	10
<i>Pacific Maritime Association,</i> 358 NLRB 1184 (2012)	11
<i>UFCW, Local 1657,</i> 340 NLRB 329 (2003)	14

RULES

Fed. R. Evid. 201	11
-------------------------	----

I. INTRODUCTION

This case turns on a straightforward legal question: whether ILWU Local 10 member Demetria Owens is entitled to copies of her grievance-related documents that she undisputedly had the right to review at the Union’s office. Ms. Owens testified that she made her request in writing; the Union claims she did not. But despite the controversy over how the request was made, all agree on the two basic facts in this case: Ms. Owens requested copies of two grievance committee minutes, and Local 10 officers Melvin Mackay and Farless “Pete” Dailey denied that request. Local 10’s so-called policy against providing copies, which is unwritten and of uncertain scope, does not substantially countervail Ms. Owens’ interest in acquiring documents related to her grievance. Nor did the Union satisfy its obligation to Ms. Owens by offering to let her view the documents at the Union hall. The Union therefore violated its duty of fair representation by denying Ms. Owens’ request for copies of the grievance committee minutes.

II. STATEMENT OF FACTS

Demetria Owens has been a member of the International Longshore and Warehouse Union, Local 10 (“ILWU Local 10” or “Local 10”) for fourteen years, and a Class-A registrant with the joint dispatch hall operated by Local 10 and the Pacific Maritime Association (“PMA”) for the last five years. (Tr. 14:6–15)¹ Ms. Owens also receives dispatches through Local 10’s sister union, ILWU Local 34, which operates a joint dispatch hall with PMA for clerk positions. (Tr. 15:23–16:2)

¹ References to the transcript are noted by “Tr.” followed by the page and line number. References to the General Counsel’s exhibits are noted as “GC Exh.” followed by the exhibit number. References to Respondent’s exhibits are noted as “Resp. Exh.” followed by the exhibit number.

A. LOCAL 10 DENIES OWENS' REQUEST FOR COPIES

One morning in late February 2018, just after receiving her regular morning dispatch from the joint hiring hall, Ms. Owens crossed to the adjacent Local 10 office, handed a written request for certain documents to the secretary on duty, Mercedes Perez, and asked Ms. Perez to deliver copies of the request to three Local 10 officials: President Melvin Mackay; Secretary-Treasurer Farless "Pete" Dailey; and Business Agent Ed Henderson. (Tr. 15:4-9; 16-19; GC Exh. 2) The documents Ms. Owens requested were minutes from two Local 10 grievance committee meetings that occurred on June 12, 2017 and January 22, 2018. (GC Exh. 2) Ms. Owens had grievances heard during each of those two committee meetings: grievances 22-17 and 23-17 on June 12; and grievance 54-17 on January 22. (Tr. 19:18-23; 19:25-20:17; Resp. Exhs. 2-6) All three grievances related to the manner in which Owens had been dispatched for work on particular days, and two of the three grievances named the dispatcher as the subject of the complaint. (Tr. 52:8-21; 53:6-55:21; Resp. Exhs. 3-4) Ms. Owens had asked for and received the same type of documents from Local 10 several years earlier. (Tr. 28:18-25)

A few days later, Ms. Owens again stopped by the Local 10 office just after receiving her morning dispatch, this time to check on her request for documents. (Tr. 21:19-20) Dailey told her to come back and he would have them ready for her. (Tr. 22:17-19) So Ms. Owens returned to the Local 10 office the next morning after dispatch. This time, Dailey said she had to speak to President Melvin Mackay first. When Ms. Owens demurred, Dailey said he had to check with the Union's attorney before he could give her the minutes. (Tr. 23:22-25) Dailey also objected that the grievance committee minutes included information about other grievants, but Ms. Owens assured him she was only interested in the minutes relating to her own grievances. (Tr. 25:11-14) And so Ms. Owens came back yet again the following morning after dispatch. Dailey again insisted that she speak to President Mackay, and this time she agreed to do so. (Tr. 25:25-26:2)

Dailey escorted Owens to Mackay's office, where she again asked for the minutes she had requested. (Tr. 26:18) Mackay said she could look at them but could not take a copy, nor could she take a photograph of the minutes. (Tr. 27:8–11; 45:25–46:2) This was the first time Ms. Owens had ever heard of a Local 10 rule prohibiting members from obtaining copies of union documents. (Tr. 30:22–31:1) Ms. Owens again asked for copies and pointed out that she had received copies of grievance committee minutes in the past. (Tr. 27:12–14) Mackay again refused Ms. Owens' request, claiming that Local 10 stopped providing copies of documents after another member altered grievance committee minutes. (Tr. 27:14–18) Ms. Owens agreed that it was awful that a member had committed such a fraud, but reiterated that she was entitled to the minutes relating to her grievances. (Tr. 27:19–20) As Ms. Owens repeatedly testified, she was unable to view the minutes at that time because she had to report to work. (Tr. 38:7–8; 39:11–14)

Union officials Mackay and Dailey told a different story: they claimed that Ms. Owens reviewed the grievance minutes in Mackay's office. But their testimony on this point was inconsistent. Mackay testified on direct examination that Owens viewed the minutes only once, while Farless Dailey testified on direct that it happened "a number of times" (Tr. 85:14–15; 115:7–8). On cross examination, Dailey at first denied that he had testified that Owens viewed the minutes "a number of times." When pressed on this point, Dailey offered a series of inconsistent statements as to how many times Owens had reviewed the minutes, before finally settling on a number of "three or four times." (Tr. 128:3–129:3) That number still contradicted Mackay's testimony that Owens reviewed the minutes only once. Mackay also testified that Ms. Owens viewed the minutes shortly after he began his current term as President, in January 2018, while Dailey testified that Ms. Owens viewed the grievance minutes only a few weeks before the

hearing. (Tr. 84:2–13; 127:15; 128:2) It was only in response to a leading question from Local 10’s counsel that Dailey then testified that Ms. Owens “could have” reviewed the minutes a few months before the hearing. (Tr. 136:11–13)

Mackay also testified that he gave Ms. Owens the minutes and she “sat at the head of my desk and reviewed them,” for approximately an hour or more. (Tr. 83:7–8; 85:1–2) Dailey offered similar testimony, even though he left the room before Ms. Owens did and therefore was not in a position to know how long she remained in Mackay’s office. (Tr. 127:8–11; 129:15–16)

Ms. Owens, on the other hand, credibly testified that she has to report to work between 8:00 and 9:00 a.m., after receiving her dispatch at 7:00 a.m. Depending on the day’s assignment, her work could be as far away as Benicia, some 38 miles away from the dispatch hall. (Tr. 140:16–141:3) Ms. Owens knows that the consequence for failing to show up for work includes loss of work that day and loss of dispatch privileges for twenty-four hours. (Tr. 141:11–23) Therefore, according to Local 10’s improbable version of events, Ms. Owens stayed to review the grievance committee minutes even though doing so put her in jeopardy of losing work and dispatch privileges, and even though she was supposedly free to view the minutes at another time, and as many times as she liked.

B. LOCAL 10’S SUPPOSED POLICY AGAINST PROVIDING COPIES

Respondent’s witnesses struggled to testify with clarity about the scope and origins of Local 10’s so-called policy against providing copies of certain documents. In response to a leading question, Mr. Mackay testified that there had been a situation where members were misinformed as to a decision by a union committee. (Tr. 75:16–19) Mackay then described a situation where a member altered the bench decision of an arbitrator—not a union committee minute—to change the outcome of the decision. (Tr. 76:3–8; 79:6–10) Dailey similarly testified that committee minutes—not an arbitrator’s award—were altered, and only corrected this

statement in response to a leading question from counsel. (Tr. 117:15–18) According to Mackay, the altered bench decision was “scattered over like graffiti” and caused a “rift” in the membership. (Tr. 80:23; 81:1) But Local 10 did not retain a copy of the altered document, even though this altered arbitration decision supposedly caused such a significant controversy. (Tr. 79:20–22) Mackay also testified that he was able to resolve the controversy surrounding the bench decision by inviting a group of union members to come to the Local 10 office and review the original decision, which apparently satisfied them. (Tr. 76:24–77:2) This was the only incident of document alteration Mackay described, and the sole justification offered for the policy against giving out photocopies, even though the altered document was an arbitrator’s award not within Local 10’s exclusive control. (Tr. 90:22–91:1)

III. CREDIBILITY

A. MELVIN MACKAY

Melvin Mackay gave inconsistent testimony and at times refused to answer questions in a manner that suggested he was tailoring his responses to support a specific narrative. In addition to contradicting his co-official Pete Dailey regarding the number of times Owens supposedly viewed the grievance committee minutes, Mackay offered testimony in several areas that was either inconsistent with the record or simply implausible. For example, he testified that Ms. Owens’ grievance against joint dispatcher Michael Villegiante was limited to a charge of conduct unbecoming a union member, even though the document he was reviewing at the time, Respondent’s Exhibit 6, explicitly refers to additional bases for complaint: “13.1 discrimination” and “8.41.” (*Compare* Tr. 88:6 *with* Resp. Exh. 6) Mackay also refused to acknowledge the simple fact that the original handwritten grievance committee notes could be used to cross-check the accuracy of the digital records Ms. Owens requested. (Tr. 97:13–20) And Mackay repeatedly refused say whether the so-called policy against distributing copies of documents

applied to arbitration decisions as well as to grievance committee minutes, before arriving at the position that it also applied to arbitration documents and Section 13.2 grievance documents. (Tr. 102:8–103:11) Mackay’s strained testimony about the scope of the policy also contradicted that of his co-official, Farless Dailey, who did not include Section 13.2 grievance materials in the list of documents he claimed were covered by the policy. (Tr. 118–126)

B. FARLESS “PETE” DAILEY

Like Mackay, Dailey testified evasively about the scope of the so-called policy against providing copies. In response to the question of whether there were other documents besides grievance committee minutes that members could not obtain, Dailey responded “Any minutes, we do not give out.” (Tr. 118:20–119:2) Pressed on this answer, Dailey admitted that members could obtain dues statements, but twice stated that members could not obtain copies of other documents. (Tr. 119:8–120:3) He then reversed himself, stating that members could obtain copies of “informational” documents or “bulletins.” (Tr. 121:22–122:1) Dailey refused to say whether the so-called policy against copies also applied to the summons letters and complaints entered into the record as Respondent’s Exhibits 2 and 3. (Tr. 123:6–8) Dailey then testified that he had denied other requests for documents such as doctor’s notes, but refused to say whether that was based on the so-called policy against providing copies, then said it was, and in the next breath reversed himself. (Tr. 125:19–126:23) Dailey also gave conflicting testimony as to whether Ms. Owens requested copies in the first place, testifying “no” on cross examination, then saying he was not sure, then settling on “she could have.” (Tr. 138:10–16)

Mackay’s and Dailey’s inconsistent and evasive responses to questions show that both men testified with a preconceived narrative in mind and that they shaded their testimony to promote that narrative. Their story was sufficiently developed for both of them to testify that a policy prevented them from giving Ms. Owens the copies she requested. But when questioned

more broadly about this so-called policy or its application in circumstances other than Ms. Owens' request, the witnesses were either unwilling or unable to answer, or changed their answers, or contradicted each other. Their testimony should therefore receive little weight insofar as it conflicts with that of Ms. Owens.

IV. ARGUMENT

A. **Undisputed: Local 10 Denied Ms. Owens' Request for Copies.**

Although Local 10 disputes the manner in which Ms. Owens made her request for the grievance committee minutes, there is no dispute that she did in fact make such a request, and that it was denied. (Tr. 91:20–25; 112:10–12; 114:7–12) But should it be necessary to decide which version of events is true, Ms. Owens should be credited. Union officials Mackay and Dailey's credibility is undercut by their contradictory testimony as to the timing of Ms. Owens' supposed oral request and the number of times she supposedly viewed the grievance committee minutes. *See* Section III, *supra*. Furthermore, it would be appropriate to draw an adverse inference from Local 10's failure to call its secretary, Mercedes Perez, to rebut Owens' testimony that Perez took delivery of her written request for copies. *See, e.g., International Automated Machines*, 285 NLRB 1122, 1123 (1987) (adverse inference was warranted for respondent's failure to call its production manager to testify about significant disputed matters), *enfd. mem.* 861 F.2d 720 (6th Cir. 1988); NLRB Division of Judges Bench Book §16-611.5 (2018). Indeed, in the absence of such testimony by Perez, Ms. Owens' testimony about her written request is uncontradicted.

By contrast, it is not appropriate to draw an adverse inference against Ms. Owens based on the testimony Local 10's counsel elicited from her conceding that she did not provide them any documents responsive to item 1 of the subpoena duces tecum offered into evidence as Respondent's Exhibit 1. (Tr. 34:14-16) As Ms. Owens testified on re-direct examination, Local

10's counsel did not ask her for the subpoenaed documents prior to the opening of the hearing or at any other time except when cornering her on the witness stand. (Tr. 50:8–11) It is hard to fathom how Local 10's counsel could reasonably draw the conclusion that no documents were forthcoming simply because Ms. Owens, an unrepresented party, failed to affirmatively approach and confer with an opposing attorney to offer up the subpoenaed documents before the hearing began. Indeed, as Ms. Owens clarified during cross examination by Local 10's attorney, the only document she possessed that was responsive to the subpoena was the written request entered into evidence as General Counsel Exhibit 2. (Tr. 36:23–24)

Given the contradictory testimony of Local 10's witnesses and the union's failure to call a percipient witness within its control, Ms. Owens' testimony that she delivered her handwritten request should be credited. But setting aside the factual question of how the request was made, there is no dispute that Ms. Owens made her request for copies, and that Local 10 refused to provide them.

B. Local 10 Was Obligated Under the Duty of Fair Representation to Provide Ms. Owens Documents Relating to Her Grievances.

Local 10's duty of fair representation to Ms. Owens encompasses the obligation to provide copies of the grievance committee minutes she requested. A union owes all unit employees the duty of fair representation, which extends to all functions of the bargaining representative. *Letter Carriers Branch 529*, 319 NLRB 879, 881 (1995). A union breaches this duty when its conduct toward a unit member is arbitrary, discriminatory, or in bad faith. Because, however, unions are allowed a wide range of reasonableness in serving unit employees, any subsequent examination of a union's performance must be "highly deferential." *Id.* (quoting *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 76, 78 (1991)). 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. *Id.* (citing *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 76, 78 (1991)).

Applying the duty of fair representation to unit employees' requests for grievance-related documents, the Board found in *Branch 529*, *supra*, that a union arbitrarily refused to provide a unit employee with copies of her grievance forms and held that the arbitrary refusal to do so violated the duty of fair representation. In reaching this conclusion, the Board reasoned that (1) the documents pertained to the requestor's grievance, and so the requestor's legitimate general interest in obtaining copies of these documents was therefore self-evident; (2) the requestor communicated a legitimate particular interest in obtaining the documents to the union (getting her job back); and (3) the union has raised no substantial countervailing interest in refusing to provide the requested copies. 319 NLRB at 881. The Board found the union's countervailing interest insufficient even though it was arguably non-discriminatory and the union relied on it in good faith. *Id.* at 883.

In evaluating the legitimacy of a request for documents, the Board considers whether the documents would further the requestor's stated purpose in obtaining them. For example, in *Local 307, National Postal Mail Handlers Union*, the Board found that the union did not violate the duty of fair representation in excluding copies of witness statements from a grievance file it provided to a grievant. 339 NLRB 93 (2003). The grievant's stated purpose in obtaining the statements was to obtain backpay for a suspension, even though he had already signed a settlement regarding the same issue. *Id.* at 94. Relying on this and the union's reasonable belief that the grievant could resort to physical violence against the witnesses, the Board found no violation. *Id.*

Here, as in *Branch 529*, Ms. Owens requested copies of documents pertaining to her own grievances, and therefore her general interest in these documents was self-evident. Owens' particular interest in these documents was also self-evident from the nature of the documents she requested, which she would need to make an informed decision as to whether to appeal the decision of the grievance committee to the Appeals Board, as provided for in the summons letters. (Resp. Exhs. 2–4) Unlike in *Local 307*, there is no evidence that the request was illegitimate or might put other members at risk. Thus, Local 10 was required to provide the requested documents unless it presented a substantial countervailing interest.

Local 10 may argue that Ms. Owens' grievances were internal union matters not covered by the duty of fair representation. Certainly, the protection afforded under the duty of fair representation is broad but not unlimited—it assumes that the activity bears some relation to the employees' interests as employees, and is not a purely internal union matter. *OPEIU Local 251 (Sandia Corp.)*, 331 NLRB 1417, 1418 (2000). But the complaints Ms. Owens filed with the grievance committee here relate to dispatching and therefore “impact[] on the employment relationship,” even if they were filed with the Union rather than an employer, and should therefore be covered by the duty of fair representation. *Id.*

Here, Grievances 23-17 (Resp. Exh. 3) and 54-17 (Resp. Exh.4) are on their face directed at alleged improprieties in dispatching that resulted in Ms. Owens not obtaining work she was otherwise entitled to, a result that unquestionably “impacted” her employment. Moreover, as Local 10 Secretary-Treasurer Dailey testified, it is the employer, not the Union, who issues dispatch tickets to employees through the joint dispatch process. (Tr. 121:5–16) Because dispatching is jointly controlled by the Union and the Pacific Maritime Association, as Local 10's officers admitted, irregularities in dispatching cannot be a purely internal union matter.

Owens' two grievances against the dispatchers also invoked the "PCLCD," or Pacific Coast Longshore Contract Document, which is a collective-bargaining agreement between ILWU and the Pacific Maritime Association,² and NCSF-113-1995, which Respondent's Exhibit 7 identifies as a Joint Port Labor Relations Committee agreement on Dispatch Rules. In fact, Union President Melvin Mackay specifically testified that Section 13.1, which Ms. Owens referenced in her grievances, falls under a "special grievance handbook" or "special handbook," which Mackay also referred to as an "extension" of the PCLCD. (Tr. 104:17-18, 22-24; 107:6-7) Furthermore, Local 10's own letters to Ms. Owens notifying her of the grievance committee meetings repeatedly and conspicuously refer to her complaints as "grievances," and Union Secretary-Treasurer Dailey himself described Owens' complaints as "grievances." (Tr. 131:6; Resp. Exh. 3 at 1) Thus, Ms. Owens' complaints concern matters that impact her employment and are grievances for the purpose of evaluating Local 10's handling of her request for related documents under the duty of fair representation. Because Ms. Owens has legitimate general and particular interests in her grievance-related documents, Local 10 was required to provide copies of the requested documents unless it can show it had a substantial countervailing interest that justified its otherwise unlawful refusal to provide copies to Ms. Owens.

C. Local 10 Has No Substantial Countervailing Interest.

Although the Board has not had the occasion to fully define what qualifies as a "substantial" countervailing interest, its decisions in this area certainly show that something more than the mere invocation of a policy is required. In *Letter Carriers Branch 529*, for example, the Board found insufficient the Union's assertion that the documents requested were

² The General Counsel requests that the Judge take administrative notice that PCLCD stands for Pacific Coast Longshore Contract Document and refers to a collective-bargaining agreement between ILWU and PMA. The existence of this collective-bargaining agreement is common knowledge in the longshore labor community, and the Board itself noted these facts in *Pacific Maritime Association*, 358 NLRB 1184, 1184 (2012). See Fed. R. Evid. 201; NLRB Division of Judges Bench Book, § 16-201.

the union's "property," or that providing copies contradicted the national union's policy. 319 NLRB at 882. In contrast, the Board found that a union's interest in keeping witness statements confidential from a disgruntled employee was substantial and justified. *Local 307, National Postal Mail Handlers Union*, 339 NLRB 93, 94 (2003).

Here, the task of evaluating Local 10's so-called policy is complicated by the fact that the policy is unwritten, and the officials self-appointed as its executors cannot agree which documents it applies to. And while Local 10 attempted to provide some justification for its so-called policy against providing copies of grievance documents in the form of a story about a member's fraudulent dissemination of a doctored arbitration award, this unfortunate anecdote does not justify a blanket refusal to provide grievance committee minutes to grievants such as Ms. Owens.

Local 10 owns and controls the original grievance minutes and could easily implement less restrictive measures to ensure the integrity of these documents. Unlike an arbitration award, which is written and kept in its original form by the arbitrator, the electronic grievance committee minutes are generated and stored by the union, which has absolute control over them. In addition, the Union's secretary, Jessenia Olivares, controls access to the original handwritten minutes, which could be used to verify the authenticity of any purported grievance minute. (Tr. 85:26–86:9; 95:19–23) The Union also had other avenues available for addressing its concern about document fraud, including filing internal charges against the individual who forged the document. Unlike those more narrowly tailored approaches, Local 10's ill-defined-yet-broad ban on providing copies, if in fact such a policy exists, essentially disregards members' interests in transparency and accountability.

Not only is the outright ban overbroad, but it is also likely to be an ineffective safeguard against the type of fraud it supposedly aims to prevent. For example, Local 10's attorney elicited testimony from Ms. Owens that she had been a member of the grievance committee herself, and therefore was presumably familiar with the form of the minutes, which are not lengthy. Moreover, grievants can familiarize themselves with the form and content of grievance committee minutes by studying them in person at the Union office. Refusing to give Owens or any other member copies of such documents would therefore do little to prevent them from independently creating forgeries if they chose to do so.

Local 10's so-called policy of not providing copies also stands in contrast to its treatment of contract documents or side agreements, documents whose integrity it presumably would also like to safeguard. As Melvin Mackay testified, the Union and the Employer Association both retain copies of such agreements in case there is a dispute about what the documents say.

(Tr. 98:15–99:5) It is not clear why this common practice in labor relations, whereby both parties in interest retain copies of the relevant documents, would suffice for contract documents but not for the committee minutes at issue here. Indeed, as Mackay testified, he was able to resolve the controversy that supposedly prompted the ban on copies by showing the members the Union's copy of the arbitrator's award, illustrating the point that Local 10's retention of the original documents should be sufficient to protect its interest in their integrity.

Certainly, there are circumstances where the Union would be justified in restricting access to grievance documents. Indeed, proceedings under Article 13.2 of the collective-bargaining agreement, which Union President Mackay testified involve concerns about harassment or sexual misconduct, implicate sensitive information that it would be appropriate to safeguard. (Tr. 103:11–24; 104:8–16) Mackay admitted, however, that the grievance documents

Ms. Owens requested did not involve Section 13.2 issues. (Tr. 106:18–23) And unlike in the Article 13.2 harassment proceeding, where the Union has a substantial interest in protecting member privacy, the Union’s broad policy against providing copies of grievance documents lacks a similarly compelling rationale. Because Local 10 lacks a substantial countervailing interest, it was required to provide copies of the documents Ms. Owens requested.

D. The Offer to View Copies Was Insufficient.

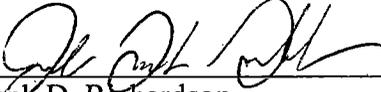
It is undisputed that Local 10 offered to allow Ms. Owens to view the documents, but this did not satisfy its obligations to her under the duty of fair representation. The Board squarely addressed this issue in *Letter Carriers Branch 758 (Postal Service)*, reversing the Administrative Law Judge and finding that the union’s failure to provide copies of grievance-related documents was an unfair labor practice under Section 8(b)(1)(A). 328 NLRB 952, 953 (1999). In reaching this conclusion, the Board observed that “the right to photocopy union documents is merely a corollary of the employee’s right of access to the documents.” *Id.* More recently, the Board held as a matter of law that denying a request for copies of such documents is an unfair labor practice, even where the requestor had accepted the union’s offer to view the documents and had in fact done so. *See UFCW, Local 1657*, 340 NLRB 329 (2003) (granting motion for summary judgment where no countervailing interest justified refusal to provide copies). Any argument that the offer to view the grievance minutes was sufficient should therefore be summarily rejected.

V. CONCLUSION

This case is about the right of union members to hold their bargaining representative accountable, which they cannot do unless they are able to obtain documents that show how their bargaining representative makes decisions that affect their terms and conditions of employment. Local 10’s ban on providing copies of documents ill-serves its supposed interest in preventing

dissemination of counterfeits, and a purported interest in protecting the integrity of the Union's documents is not so substantial as to outweigh members' compelling interest in transparency and accountability. Ms. Owens was entitled the copies she requested, and it was an unfair labor practice for Local 10 to deny her request.

DATED AT San Francisco, California this 14th day of September, 2018.



Joseph D. Richardson
Counsel for the General Counsel
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

PROPOSED CONCLUSIONS OF LAW

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
2. By refusing to provide to Demetria Owens copies of her grievance forms, Respondent has failed to represent her for reasons that are unfair, arbitrary, and invidious and has breached the fiduciary duty it owes the employees it represents.
3. Respondent's acts, described in paragraph 2 above, are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

**INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 10 (PACIFIC
MARITIME ASSOCIATION)**

and

Case 20-CB-216170

DEMETRIA OWENS, an Individual

**AFFIDAVIT OF SERVICE OF COUNSEL FOR THE GENERAL COUNSEL'S
BRIEF TO THE ADMINISTRATIVE LAW JUDGE**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **September 17, 2018**, I served the above-entitled document(s) by **electronic mail** upon the following persons, addressed to them at the following addresses:

Demetria Owens
115 Paradise Drive Apt 1
Hercules, CA 94547-2787
demi2000@pacbell.net

Melvin W. Mackay, President
International Longshore and Warehouse
Union, Local 10
400 North Point Street
San Francisco, CA 94133
melmackay@aol.com, local10president@bayarea.net

Emily M Maglio, Attorney
Leonard Carder, LLP
1188 Franklin St Ste 201
San Francisco, CA 94109-6852
emaglio@leonardcarder.com

September 17, 2018

Date

Vicky Luu, Designated Agent of NLRB

Name

/s/ V Luu

Signature