



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (415)356-5130  
Fax: (415)356-5156

May 11, 2020



Re: OPERATING ENGINEERS LOCAL  
UNION NO.3 (APEX TESTING  
LABORATORIES, INC.)  
Case 32-CB-258488

Dear [REDACTED]:

We have carefully investigated and considered your charge that OPERATING ENGINEERS LOCAL UNION NO.3 (the Union) has violated the National Labor Relations Act.

**Decision to Dismiss:** Your charge alleges that the Union failed to process your grievance for unlawful reasons. The investigation revealed that the events giving rise to this charge occurred in 2017. Section 10(b) of the National Labor Relations Act provides that no complaint can issue on an unfair labor practice occurring more than six months prior to the filing and service of the charge, thus I cannot issue complaint in this matter. Moreover, the evidence also showed that when your pay issue arose in 2017, you did not contact the Union about that issue until after the 30-day time period for filing grievances expired and, when you spoke with a Union representative, he immediately advised you that there was nothing they could do to assist you. Finally, you allege that you more recently learned (through a public records request in connection with your state wage claim) that the Union told the Employer in 2017 not to pay you, and the Union thereby failed to represent you fairly. To the contrary, the documents show that the Union informed the Employer that it should tell you that it had your check ready when you completed your paperwork to show the hours you worked. In light of the facts, there is insufficient evidence to establish a violation of the Act.

**Charging Party's Right to Appeal:** The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

**Means of Filing:** You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible (Written instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at [www.nlr.gov](http://www.nlr.gov). See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and frequently asked questions are also available at [www.nlr.gov](http://www.nlr.gov). If you require additional assistance with E-Filing, please contact [E-File@NLRB.gov](mailto:E-File@NLRB.gov).)

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal

and your written explanation of why you cannot file electronically to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

**Appeal Due Date:** The appeal is due on **May 26, 2020**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than May 25, 2020. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

**Extension of Time to File Appeal:** The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before May 26, 2020**. The request may be filed electronically through the *E-File Documents* link on our website [www.nlr.gov](http://www.nlr.gov), by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after May 26, 2020, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

**Confidentiality:** We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



JILL H. COFFMAN  
Regional Director

Enclosure

OPERATING ENGINEERS LOCAL  
UNION NO.3 (APEX TESTING  
LABORATORIES, INC.)  
Case 32-CB-258488

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cc: Michal Strunk  
Operating Engineers Local Union No 3, International Union of Operating Engineers  
AFL-CIO  
160 S. Loop Road  
Alameda, CA 94502

Abdel-Kadar Khelifa, President  
Apex Testing Laboratories, Inc  
3450 3rd Street  
San Francisco, CA 94124

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**APPEAL FORM**

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

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Case Name(s).

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Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

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*(Signature)*