

From: (b) (6), (b) (7)(C)
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Cc: [Seid, David](#); [Bock, Richard](#); [Szapiro, Miriam](#); [Shorter, LaDonna](#); [Weth, Patricia](#)
Subject: Public School Employees Staff Org., 19-CB-255972 (case-closing email)
Date: Wednesday, June 10, 2020 1:21:15 PM

The Region submitted this case for advice as to whether the Union, through its Executive Board, breached its duty of fair representation to the Charging Party when it opposed having (b) (6), (b) (7)(C) carry over seniority to a new position. For the reasons discussed below, we conclude that the instant charge should be dismissed, absent withdrawal.

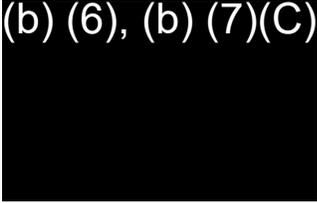
We base our determination primarily on the fact that the Charging Party had no contractual right to retain (b) (6), (b) (7)(C) seniority when (b) (6), (b) (7)(C) accepted the Employer's offer to transfer from (b) (6), (b) (7)(C) position to (b) (6), (b) (7)(C) position. Rather, despite that the wording of Section 9.6 of the contract might seem to indicate otherwise, the parties do not dispute that the collective-bargaining agreement does not provide for unit employees to carry over their seniority to another classification if they change jobs. Because the terms of the bargaining agreement fully support the Executive Board's decision, we find that the Union did not act irrationally or discriminatorily toward Charging Party.

Although certain members of the Executive Board stood to benefit from the Union's decision, we do not conclude that this, alone, supports finding a violation, particularly where the Executive Board's decision was consistent with the terms of the bargaining agreement. Nor is our determination undermined by that fact that around the same time the Charging Party transferred to a new position, the Union and Employer entered into a memorandum of understanding, pursuant to which unit employees who shifted into certain new positions due to the Employer's reorganization would retain seniority. The MOU does not apply to the Charging Party's *voluntary* transfer to a different position. Such underscores why the Charging Party is unable to identify more than a single comparator who maintained accrued seniority after a voluntary transfer, and which occurred in the 1990s. Moreover, it is unknown whether the Union had any role in that employee retaining seniority when (b) (6), (b) (7)(C) returned to a unit position. The Union, on the other hand, has identified several individuals who voluntarily transferred and lost their accrued seniority. Accordingly, the Executive Board acted reasonably to the extent it drew a distinction between the Charging Party's voluntary transfer and transfers due to the Employer's reorganization.

The Region cites *General Truck Drivers Local 315 (Rhodes & Jamieson, Ltd.)*, 217 NLRB 616 (1975), enforced, 545 F.2d 1173 (9th Cir. 1976) in support of its conclusion that the Union violated Section 8(b)(1)(A). However, our situation is distinguishable from the Board's decision in that case. There, the Board found that a union violated its duty of fair representation to a discharged employee in a manner that denied him bumping rights. Specifically, the bargaining agreement provided the employee with bumping rights while also providing the union with the ability to regulate how the bumping right was administered. The Board found that that the union acted unlawfully by failing to prospectively consider how to apply bumping rights, and by having unit employees vote on a poorly worded misleading question. Here, by contrast, the Charging Party had no comparable contractual right. Nor is there any evidence that the Union considered the issue of Charging Party's seniority in a misleading manner.

This email closes the case in Advice as of today. Please feel free to contact us with questions or concerns.

(b) (6), (b) (7)(C)

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