The Region submitted this case for advice as to whether the Union breached its duty of fair representation by failing to communicate the results of an internal investigation into allegations of racial bias and other improper conduct. We agree that this allegation should be dismissed, absent withdrawal.

Briefly, the Union represents a unit of approximately 138 employees at the Employer’s facility near the Denver International Airport. Historically, stewards were selected by appointment and they were responsible for representing the entire unit. Dissatisfied with the Union’s handling of perceived racial discrimination by customers and the Employer, a group of drivers, who comprised a minority of the unit, petitioned the Union in August 2019 to change its selection method to allow unit employees to elect their stewards. In response, the Union put to a vote whether to change the process for selecting stewards and, if so, whether to elect stewards by department, shift, or companywide. In a letter to the Union dated August 26, employees complained that a unit-wide election was unfair because drivers’ votes would be diluted, that the Union acted in bad faith in handling the election, that the Union tainted the election by coercing employees to vote “no” by offering inducements, and that the Union generally exhibited racial animus and breached its duty of fair representation in its representation of racial minorities. Three days later, in a letter to the employee who was the leader of the group, the Union indicated that its constitution expressly prohibits discrimination, that it had always endeavored to represent all members fully and fairly, and that it was retaining an independent law firm to investigate the employees’ various allegations. The investigation, which ended around January 2020, concluded that the complaints lacked merit.¹

We conclude that the Region should not pursue the allegation that the Union failed to notify unit employees of the results of its internal investigation. As the exclusive representative of unit employees, a union owes a duty of fair representation to all employees in matters of collective bargaining, contract administration and enforcement, and “in other instances in which a union is acting in its representative role.” *Air Line Pilots Ass’n, Int’l v. O’Neill*, 499 U.S. 65, 77 (1991); see *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). A union breaches that duty by engaging in conduct that is arbitrary, discriminatory, or in bad faith. *Air Line Pilots*, 499 U.S. at 67. A failure to communicate decisions related to a grievance or to respond to inquiries for information by unit employees may also rise to the level of arbitrary conduct unless there is a reasonable excuse or meaningful explanation. *General Counsel’s Instructions Regarding Section 8(b)(1)(A) Duty of Fair Representation Charges*, Memorandum GC 19-01, at 1 (Oct. 24, 2018). Here, even assuming the duty of fair representation might extend to an internal investigation into an allegation of biased representation, there is no evidence that any unit employee requested a report on the outcome of the investigation, or that the Union thereafter refused to provide it. Moreover, while allegations of racial bias, whether in Union representation or elsewhere, represent a gravely serious matter, there is no evidence on this record that the Union’s response to those allegations, or its representation of employees who sought the change in stewards, was unlawful.² Rather, the Union took the allegation and conducted an internal investigation. However, the investigation was not a grievance,
and the Union had no obligation to affirmatively inform unit employees of its internal findings in the same way that it must keep a grievant informed during the grievance process. Accordingly, the Region should dismiss this allegation, absent withdrawal, in the circumstances of this case.

This email closes this case in Advice. Please contact us with any questions or concerns.

[1] We note that the Charging Party and two others have filed EEOC complaints against both the Employer and the Union. They remain pending.

2 The evidence presented here fails to establish that the Union racially discriminated against certain members in its representational function. Such conduct would clearly violate the Act. Cf. Steele v. Louisville & N.R. Co., 323 U.S. 192 (1944); see Metal Workers Local 1 and 2 (Hughes Tool Co.), 147 NLRB 1573 (1964).