The Region submitted this case for advice on whether the Union breached the duty of fair representation in violation of Section 8(b)(1)(A) by failing to fill out for a member an illness report form used to initiate the workers’ compensation claim process. We conclude that, because the service the Union provided for workers’ compensation claims did not involve its authority as the employees’ exclusive bargaining representation to affect employment terms, the duty of fair representation is inapplicable and the Union did not violate Section 8(b)(1)(A).

The Charging Party is a member of IATSE Local 190 (“the Union”) and is dispatched to stagehand jobs in Wichita, Kansas, through its exclusive hiring hall. The hiring hall rules do not mention workers’ compensation claims in any manner, but the Union maintains accident and illness report forms that it uses to initiate the workers’ compensation claim process for employees. In 2016 and 2018, the Charging Party suffered injuries while working on jobs to which he had been dispatched through the Union’s hiring hall. On both occasions, after he reported the injury to a Union official at the jobsite, the Union completed an accident report form and submitted it to the relevant employer. The Charging Party had to correct certain misinformation about his 2016 injury after the workers’ compensation claim was initially denied. With that exception, the Charging Party obtained coverage for each claim by merely informing the onsite Union official of the injury.

On January 20, 2020, the Union dispatched the Charging Party to work for SMG Wichita as a rigger setting up and dismantling a WWE event. The Union’s collective-bargaining agreement with SMG Wichita, which operates the local multi-purpose arena, requires the latter to obtain its employees through the Union’s hiring hall. The agreement makes no mention of workers’ compensation claims. Due to the length of the job, WWE provided catered meals for the dispatched employees working the event, including the Charging Party. Late into the job, the Charging Party became physically sick and had to excuse himself into the stagehands room. The Union steward and a business agent were also in the room, and the Charging Party asked if they would fill out an illness report form for a workers’ compensation claim. The two Union officials declined to do so without providing any explanation. The Charging Party made no other attempt at this time to obtain an illness report form.

The next day, January 21, the Charging Party continued to feel sick and...
On July 9, the Charging Party filed the current charge alleging that the Union violated Section 8(b)(1) (A) by arbitrarily refusing to complete or provide an illness report form to start the process for obtaining workers’ compensation coverage for the work-related illness suffered on January 20. The Charging Party consulted with a workers’ compensation attorney, who informed the Region that he did not pursue the claim because it was unlikely to be successful. The records do not show a connection between the meals provided to the Charging Party while working at the January 20 event and the illness experienced.

The Union’s defense to the charge is, initially, that the shop steward and business agent at the January 20 event for WWE were busy doing their own jobs when the Charging Party approached them. After they had time to retrieve the paperwork, the Charging Party already had returned to work. The Union asserts that the Charging Party did not ask the Union officials to fill out the report a second time on January 23. Second, the Union asserts that even if the two officials refused to fill out the report, it had no duty to fill out or provide the illness report form because no provision in either the collective-bargaining agreement with SMG Wichita or in the hiring hall rules require such action. The Union notes that workers’ compensation claims involve individual rights under state statutes, and the Act does not require unions to represent employees pursuing those claims. Finally, the Union doubts that the Charging Party had a successful workers’ compensation claim under Kansas law.

We conclude that the Union did not violate Section 8(b)(1)(A) because it did not owe the Charging Party a duty of fair representation in this case. A union has a duty of fair representation to refrain from taking actions affecting the employment relationship of the bargaining unit employees it represents that are “arbitrary, discriminatory, or in bad faith.” Vaca v. Sipes, 386 U.S. 171, 190 (1967). However, as noted, this duty of fair representation is confined to matters of employment and its terms and conditions. See, e.g., Longshoremen ILA Local 1575 (Navieras, NPR), 332 NLRB 1336, 1336 (2000) (quoting Miranda Fuel Co., 140 NLRB 181, 185 (1962), enforcement denied, 326 F.2d 172 (2d Cir. 1963)); Food & Commercial Workers Local 222 (Iowa Beef Processors), 245 NLRB 1035, 1039 (1979) (finding union owed no duty of fair representation when it denied strike benefits to striker). Thus, the duty of fair representation does not apply to union conduct that either does not impact the employment relationship or relates only tangentially to it. See Office Employees Local 251 (Sandia Nat’l Laboratories), 331 NLRB 1417, 1422, 1424–25 (2000) (finding no violation where intraunion discipline of officers for misuse of funds had speculative impact on the employer-employee relationship).

UAW Local 206 (G.R. Manufacturing Co.), Case GR-7-CB-6731, Advice Memorandum dated Apr. 3, 1986, in which Advice applied the foregoing principles to find that a union violated Section 8(b)(1)(A) when a union official refused to assist a union member file a workers’ compensation claim unless performed sexual favors, is not inconsistent with our conclusion in this case. There, the applicable collective-bargaining agreement did not require the union to file or process workers’ compensation claims for unit employees, but did specify that unit employees on workers’ compensation would continue to accrue vacation benefits and have access to light duty work. Moreover, the union had a committee that exclusively handled work-related injuries and illnesses
that provided advice to injured employees, assisted them with completing and filing paperwork, and
even spoke to the employer on their behalf. Advice concluded that the union acted in matters
affecting the employment relationship because it advocated on behalf of employees, and if it
successfully processed their claims, the employees became eligible for benefits under the contract
that were not otherwise available. Thus, by denying the unit employee assistance with workers’
compensation claim for discriminatory and bad faith reasons, the union violated Section 8(b)(1)(A).

However, we find that because certain facts distinguish the current case from \textit{UAW Local 206}, the
union’s role in assisting employees with workers’ compensation claims here does not affect the
employment relationship. First, other than twice filling out an illness report form and submitting it to
an employer, there is no evidence that the union actively and on a regular basis pursued workers’
compensation claims on behalf of employees dispatched from its hiring hall. Indeed, in 2016, the
Charging Party took steps on its own to correct the paperwork for the claim when the workers’
compensation carrier initially denied it. Thus, any voluntary past practice of the union regarding the
processing of workers’ compensation claims appears to have been minimal, and employees could
have initiated their own claims because they received no meaningful additional support by going
through the union.

The second distinction between \textit{UAW Local 206} and the current case is that the collective-bargaining
agreement here does not grant any benefits to employees who receive workers’ compensation, such
as continued leave accrual or light duty options, which are otherwise unavailable. Thus, any union
involvement here would be to assist employees pursue their statutory rights and not any rights the
union had obtained through collective bargaining. In other words, the union would not be using its
authority as the employees’ exclusive bargaining representative to affect employment terms. \textit{Cf.}
exclusively for purpose of pursuing safety-related complaint against employer before state agency
was irrelevant to collective-bargaining relationship and union’s role as collective-bargaining
representative). As a result, the duty of fair representation does not apply here, and the union could
not have breached it. \footnote{1}

Based on the preceding analysis, the Region should dismiss the Section 8(b)(1)(A) charge absent
withdrawal. This email closes this case in Advice. Please contact us if you have any questions.

\footnote{1} However, assuming the union did owe the Charging Party a duty of fair representation for this
matter, it used reasonable discretion in declining to either complete or provide to the Charging
Party an illness report form regarding alleged workers’ compensation claim. The workers’
compensation attorney that the Charging Party consulted concluded that claim was not likely to
succeed due to the lack of a connection between the meals provided to while working at the

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

(b) (6), (b) (7)(C)
January 20 event and the illness experienced. It would be difficult to find that the Union acted arbitrarily, discriminatorily, or in bad faith by not supporting a claim that lacked merit. Cf. Vaca v. Sipes, 386 U.S. 171, 194 (1967) (finding duty not breached when union refused to further pursue an employee’s case after concluding that arbitration would be fruitless); Meat Cutters Local 575 (Omaha Packing Co.), 206 NLRB 576, 579 (1973) (dismissing Section 8(b)(1)(A) charge where union was not obligated to further process grievance when it determined in honesty and in good faith that it was not sufficiently meritorious for arbitration).