



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 27
600 17th Street – 7th Floor North Tower
Denver, CO 80202-5433

Telephone: 303-844-3551
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www.nlr.gov

December 20, 2004

Mr. Stephen Lynn McNeess
[REDACTED]

Re: National Association of Letter Carriers
Branch 111 (U.S. Postal Service)
Case 27-CB-4656-1

Dear Mr. McNeess:

Your charge against National Association of Letter Carriers Branch 111 alleging violations under Section 8 of the National Labor Relations Act has been carefully investigated and considered.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons:

Your charge alleges that the Union breached its duty to fairly represent you when the Union's Branch President wrote a letter to the Office of Workers' Compensation Programs (OWCP) regarding an incident involving the two of you that occurred on March 11, 2004 on the workroom floor at the Sandy postal station. The evidence establishes that the incident giving rise to this charge occurred on March 11, 2004 and that the Branch President wrote his letter addressed to the OWCP on March 15, 2004. Your charge was filed on October 21, 2004, more than six months from the act alleged as an unfair labor practice. Section 10(b) of the National Labor Relations Act provides that no unfair labor practice complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy of the charge on the party against whom the charge is brought. Since your charge was filed outside the six-month statute of limitations period set forth in Section 10(b) of the Act, no formal action can be taken concerning your allegations, and your charge must be dismissed.

Moreover, even if your charge had been timely filed, I conclude that there is insufficient probative evidence to establish that the Union breached its duty to fairly

represent you in violation of the Act. The evidence establishes that the Branch President wrote his letter because of his role in the March 11, 2004 workroom floor incident, not in his official capacity as your representative or the representative of any other employees. Rather, he wrote his letter at the request of the Employer which was obligated to conduct an investigation because of the claims you had made through the OWCP and Employer's Violence in the Workplace program. Finally, you have not provided any evidence that the Employer took any disciplinary action against you or that you requested the Union's representation in any matters relating to the March 11 incident, so the Union did not have any representative role in these matters.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board. If you wish to file an appeal, your attention is directed to the following required procedures:

Appeal Due Date: The appeal must be received by the General Counsel in Washington, D.C. by the close of business at 5:00 p.m. [EST or EDT, as appropriate] on January 3, 2005. However, if you mail the appeal, it will be considered timely if it is postmarked no later than the day before the due date. The appeal MAY NOT be filed by facsimile transmission.

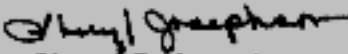
Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. You may file a request for an extension of time by mail or by facsimile transmission. The fax number is (202) 273-4283. Any request for an extension of time must be received no later than the appeal due date indicated above. A copy of any request for extension of time should be sent to me.

Appeal Contents: You are encouraged to submit a complete statement setting forth the facts and the reasons why you believe the decision to dismiss your charge was incorrect. However, the enclosed Appeal Form (NLRB-4767) by itself will be treated as an appeal if timely filed upon the General Counsel and me.

Address for Appeal: The appeal must be sent to the General Counsel of the National Labor Relations Board, Office of Appeals, 1099 14th Street, N.W., Washington, D.C. 20570. You must also send a copy of the appeal to me. At the time you send the appeal to the General Counsel, please complete the enclosed Notice of Appeal Form (NLRB-4767) and send one copy of the form to each of the parties whose names and addresses are listed below. Mailing the notice form to the parties does not relieve you of the obligation to file the appeal itself with the General Counsel and to send a copy of the appeal to me by the due date.

Notice to Other Parties of Appeal: "You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel and to me, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose name and addresses are set forth in this letter."

Sincerely,


Sheryl S. Josephson
Acting Regional Director

SSJ/NSB/jkc

Enclosures: Form NLRB-4767 Notice of Appeal
Form NLRB-4938a Procedures for Filing an Appeal
Form NLRB-5503 Access Code Certificate

cc:

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