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Region 20

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Division of Advice 536-2581-3358
536-3384

Teamsters Local 624 536-2581-6767
(Clover-Stornetta)
Case 20-CB-8130

This case was submitted for advice on whether Teamsters Local 624 (the Union) violated its duty of fair representation by failing to process the Charging Party's grievance to arbitration after assuring that it would do so.

FACTS

In November, 1986, the Charging Party, Denis Williamson, was terminated from his employment with Clover-Stornetta (the Employer) as a truck driver. Prior to his termination, Williamson had worked at the Employer's Sonoma plant, which was represented by Local 460 of the Teamsters. Local 460 grieved Williamson's discharge and, through arbitration, won his reinstatement to the Employer's Petaluma plant under the jurisdiction of Local 624. Upon his reinstatement in February, 1987, the Employer immediately made apparent its displeasure with the arbitration award, and warned Williamson that he had only 6 months to continue working with the Employer. The Employer instructed Williamson to begin looking for another job and demanded a weekly list of the names of contacts he made in his job search.

Williamson was fired on August 20, 1987. The Employer's asserted reason for the discharge was that Williamson took a delivery route 1.6 miles longer than the shortest route possible, and that he spoke with another store manager regarding "confidential company business." The Charging Party provided evidence which indicates that the dismissal was in retaliation for Williamson being awarded reinstatement by the arbitrator.

Williamson immediately contacted his Union steward, Matott, regarding his discharge. On the same day, Williamson filed two grievances: one regarding the discharge and another regarding lost overtime pay. Williamson advised the Union of the threats and animus directed toward him by the Employer. Neither the Union, nor Williamson, ever filed an unfair labor practice charge against the Employer.

A grievance meeting was held the following day. The Employer offered Williamson 2 weeks of severance pay if he would drop the grievances. Both Williamson and Matott refused the settlement offer and decided to proceed to arbitration.

From August 1987 through February 1989,Williamson called the Union monthly and was consistently told that his grievances were going to arbitration but had not yet been scheduled. In October 1988, Williamson contacted the Oakland regional office of the NLRB for help. A regional officer called the Union on Williamson's behalf, and, according to Williamson, was told that the Union was awaiting an arbitration date.

Finally, in February 1989,[1] Williamson called Matott and insisted that he put in writing the status of his grievances. Matott wrote a letter explaining that he and Williamson had met with the Employer after the discharge, and that the Union and the Employer "agreed to go to arbitration." Matott further stated,

> Since that time we have been waiting for a date for a hearing. There have been numerous calls to the law firm to try and expedite this matter and I have been told that it is being progessed [sic] upon but no date has been set for hearing the case.

By June or July, Williamson had still not heard anything regarding his arbitration. He thereupon called the Union's local president, Carr. According to Williamson, Carr was incensed when he heard of the mishandling of Williamson's grievances, and promised him that he would get an attorney on it right away. In the same telephone conversation, Williamson told Carr that he had approached the wage and hour division of the state labor commission, but that they refused to take Williamson's overtime case because he was represented by a Union. The conversation ended with Carr promising to call Williamson with an arbitration date.

Several weeks passed and Williamson did not hear from Carr. On August 25, Carr called Williamson's home in response to a message Williamson left for him. Carr spoke with Williamson's wife, as Williamson was not at home. Carr told her that he believed Williamson was handling the discharge through a private attorney and the overtime issue through the wage and hour division. Williamson's wife told Carr that her husband had not sought any independent redress of his grievances, as he had been waiting to hear from the Union about an arbitration date. Carr told her the case would have to be approved by an attorney before proceeding to arbitration, that it would probably cost $3,000, and that he was not certain that Williamson's case was good enough to take to arbitration. Carr then promised to send the case to an attorney.

On August 30, Williamson wrote to the Union demanding a response. Having received no answer, he filed the instant charge on September 19.

According to the Union's attorney, he was first contacted about Williamson's case by the Union in June. The file sent to the attorney did not contain evidence regarding Williamson's prior discharge and reinstatement, or the Employer's threats and

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[1] All dates hereinafter are in 1989.

harassment. In September, the Union's attorney sent Carr a letter stating his opinion that Williamson had no case. The Union has not offered any explanation for the handling of Williamson's grievance.

The Region has found no evidence of Union hostility or animus toward Williamson.

ACTION

We conclude that a Section 8(b)(1)(A) complaint should issue, absent settlement.

In The Church Charity Foundation,[2] the Board held that a union breached its duty of fair representation not only by handling a grievance in a perfunctory manner, but also by "willfully misinforming" an employee about the status of his grievance. [3] However, a union does not act unlawfully when it misinforms employees concerning grievances or other matters affecting employment as a result of mere negligence. See Painters Local 1310 (Reliance Electric), 270 NLRB 506 (1984).

Based on all the circumstances of this case, we conclude that Matott willfully misinformed Williamson about the status of his grievances. For almost two years, Matott consistently assured Williamson that his grievances were being processed for arbitration. Matott represented to Williamson, both over the phone and in writing in February 1989, that the grievances had been sent to an attorney and that he was merely awaiting the scheduling of a date for arbitration. Yet, there is no evidence to show that Matott took any action to further Williamson's grievances to arbitration. As of June 1989, four months after Matott's written February assurance, neither Carr, the Union's local president, nor the Union's attorney, had ever been informed of Williamson's grievances.

In these circumstances, it is improbable that Matott actually believed, albeit erroneously, that Williamson's grievances were before an attorney and awaiting an arbitration date. Indeed, the Union has not presented any evidence to show that the misrepresentations regarding the status of Williamson's grievances were due to oversight or negligent forgetfulness.

Accordingly, a Section 8(b)(1)(A) complaint should issue, absent settlement, alleging that Matott's misrepresentations concerning the status of Williamson's grievances breached the Union's duty of fair representation.

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[2] 267 NLRB 974, 980 (1983).

[3] See also, Auto Workers Local 417 (Falcon Industries), 245 NLRB 527 (1979); Service Employees Local 3036 (Linden Maintenance Corp., 280 NLRB 995, 997 (1986) (continued nonaction, despite statements to the contrary, amounts to a willful failure to pursue a grievance). Compare Oil Workers Local 8-398 (Spruance Co.), 282 NLRB 374 (1986) (no violation where employee was misinformed grievance was continuing since union official reporting the status of the grievance was not aware that it had been withdrawn from arbitration).

R.E.A.