



UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**  
**SAN FRANCISCO REGION**  
901 Market Street, Suite 470  
San Francisco, California 94103-1791  
(415) 356-5000 Fax:(415) 356-5017

August 31, 2017

Ryan Eck  
c/o George A. Rios III  
Stark & D'Ambrosio LLP  
501 W. Broadway, Suite 960  
San Diego, California 92101

Re: International Association of  
Firefighters, Local F-33  
San Diego, California  
Case No. SF-CO-17-0470

Dear Mr. Eck:

We have carefully investigated and considered your charge that the International Association of Firefighters, Local F-33 (Union) violated the Federal Service Labor-Management Relations Statute (Statute). Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

The charge alleged that on or about May 25, 2017, the Union violated its duty of fair representation when Union President Mike Massone refused to invoke arbitration after the Federal Fire Department, San Diego, California (Agency) denied your grievance.

The investigation disclosed that you are a certified hazardous materials (HAZMAT) technician and a dues-paying member of the Union. In 2014, you attended a HAZMAT training course and obtained an NFPA 472 HAZMAT certification. The NFPA 472 is the HAZMAT certification recognized by the Department of Defense. But, you are not certified as a HAZMAT technician by the California Specialized Training Institute (CSTI). California requires all HAZMAT technicians to be CSTI certified.

In January 2017, you delivered a document to a Union steward that addressed the Agency's overtime selection procedures. You argued that you and other non-CSTI certified personnel were wrongly denied temporary assigned duty and overtime at the Agency's Station 17. The Union steward delivered the document to Massone, and Massone then advised you that if you wished to file a grievance on the matter, you must use the mutually acceptable grievance form.

You filed a grievance on February 28, 2017, charging that you were wrongfully denied temporary assigned duty and overtime and noting that the CSTI HAZMAT certification is not recognized by the Department of Defense. On April 28<sup>th</sup>, Fire Chief Mary Anderson informed you that the Agency "will remain status quo regarding [the] HAZMAT program." Later that day, you told Anderson in an email that you intended to "move forward with arbitration."

Massone was “cc’d” on the email to Anderson. You then informed Anderson that you intended to elevate the grievance to step three and present it to Fire Chief Chris Connell. Connell responded to you via email on May 24<sup>th</sup>. He told you that you “[had] not followed the grievance procedures as outlined in the CBA” and failed to articulate “any violations that rose to the level of a grievable matter.” Around this time, the Union’s executive board unanimously voted not to invoke arbitration on the grievance. The Union did not invoke arbitration in the matter.

Section 7114(a)(1) of the Statute establishes a union’s duty of fair representation. When union membership is not at issue, a union violates the duty of fair representation if it acts arbitrarily, or discriminatorily, or in bad faith. *Nat’l Air Traffic Controllers Assoc.*, 66 FLRA 467, 472 (2012). Determining whether a union acted in bad faith or discriminatorily requires “a subjective inquiry into motive.” *Id.* Determining whether a union’s conduct was “arbitrary” involves an objective inquiry and evaluates if union’s conduct is so far outside a ‘wide range of reasonableness ... as to be irrational.’” *Loring Air Force Base, Limestone, Me.*, 43 FLRA 1087, 1099 (1992).

Both the Agency and the Union identified a longstanding past practice requiring firefighters, who work temporary assigned duty at Station 17, to be CSTI certified. The requirements for a CSTI HAZMAT certification are more rigorous than the requirements for an NFPA 472 certification. Due to workplace safety considerations, the Union chose not to pursue a complaint that essentially argued for lower training standards. Also, the Union did not invoke arbitration in the matter because it felt that the case lacked merit. These concerns are not so far outside a wide range of reasonableness as to be irrational or arbitrary.

Through counsel, you argue that Union President Massone or another Union representative acted in bad faith by changing the way overtime was distributed. First, you claim that the Union does not dictate what certifications are or are not recognized because that is the sole responsibility of the agency per Chapter 71. Second, the parties’ collective-bargaining agreement states that all firefighters and the agency will follow Instruction 6055.06, which sets the certification standards and what certifications are recognized, for example IFSAC and PROBARD. Third, you claim that the CSTI is not a major term or condition of employment, and although it may or may not be a higher standard, it is not the standard used by the Department of Defense. Finally, you argue that Instructions 11320 and 6055.06 govern this situation, not the California standards. The evidence indicates that Union did not act in bad faith or discriminatorily. They were solely motivated by the longstanding past practice that required firefighters to be certified under California’s more rigorous CSTI standard. The Union acted consistently with the established overtime distribution procedure and did not change it.

Accordingly, the Union’s actions did not violate the duty of fair representation and I am dismissing your charge.

You may appeal my decision to the General Counsel of the Federal Labor Relations Authority. To be timely, you must file the appeal by **October 2, 2017**. You may file the appeal by e-mail, by facsimile, by mail, by delivery service, or by hand-delivery. To file an appeal by e-mail, send the appeal to: [ogc.appeals@flra.gov](mailto:ogc.appeals@flra.gov). To file an appeal by facsimile, fax the appeal to: 202-482-6608. To file an appeal by mail, hand or delivery service, send the appeal to the Federal Labor Relations Authority, Office of the General Counsel (Attn: Appeals), 1400 K St., N.W., Second Floor, Washington, D.C. 20424-0001. You must send a copy of the appeal to the San Francisco Regional Office.

If you need more time to file your appeal, you may request an extension of time from the General Counsel's office. To be timely, the General Counsel's Office must receive your request not later than September 25, 2017. You must also send a copy of the request to the San Francisco Regional Office. To learn more about the standards for an appeal, you can visit our web page at: [www.flra.gov/ogc\\_appeals](http://www.flra.gov/ogc_appeals).

Sincerely,

A handwritten signature in black ink that reads "John R. Pannozzo". The signature is written in a cursive, flowing style.

John R. Pannozzo  
Regional Director

cc: Peter A. Sutton, Acting General Counsel  
Office of the General Counsel  
Federal Labor Relations Authority  
1400 K Street NW, Second Floor  
Washington, D.C. 20424-0001

Reid Coploff  
Woodley & McGillivary LLP  
1001 Vermont Ave. NW, Suite 1000  
Washington, D.C. 20005