UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 4
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlrb.gov
Telephone: (215)597-7601
Fax: (215)597-7658

Download
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May 3, 2018

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

Re: ZUFFA, LLC, d/b/a Ultimate Fighting Championship ("UFC")
Case 04-CA-219498

Dear (b) (6), (b) (7)(C):

The charge that you filed in this case on May 02, 2018 has been docketed as case number 04-CA-219498. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney EDWARD J. BONETT whose telephone number is (215)597-9619. If this Board agent is not available, you may contact Supervisory Attorney NOELLE M. REESE whose telephone number is (215)597-0729.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

DENNIS P. WALSH
Regional Director

cc: Lucas K. Middlebrok, ESQ.
Seham, Seham, Meltz & Peterson, LLP
199 Main Street
Seventh Floor
White Plains, NY 10601

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May 3, 2018

Wm. Hunter Campbell, ESQ.
ZUFFA, LLC, d/b/a Ultimate
Fighting Championship ("UFC")
PO Box 26959
Las Vegas, NV 89126-0959

Re: ZUFFA, LLC, d/b/a Ultimate Fighting
Championship ("UFC")
Case 04-CA-219498

Dear Mr. Campbell:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney EDWARD J. BONETT whose telephone number is (215)597-9619. If this Board agent is not available, you may contact Supervisory Attorney NOELLE M. REESE whose telephone number is (215)597-0729.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly. **Due to the nature of the allegations in the enclosed unfair labor practice charge, we have identified this case as**

one in which injunctive relief pursuant to Section 10(j) of the Act may be appropriate. Therefore, in addition to investigating the merits of the unfair labor practice allegations, the Board agent will also inquire into those factors relevant to making a determination as to whether or not 10(j) injunctive relief is appropriate in this case. Accordingly, please include your position on the appropriateness of Section 10(j) relief when you submit your evidence relevant to the investigation.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will

continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

DENNIS P. WALSH
Regional Director

Enclosures:
1. Copy of Charge
2. Commerce Questionnaire

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ZUFFA, LLC, D/B/A ULTIMATE FIGHTING CHAMPIONSHIP ("UFC") Charged Party and (b) (6), (b) (7)(C) Charging Party	**Case 04-CA-219498**

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on May 3, 2018**,** I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Wm. Hunter Campbell, ESQ.
ZUFFA, LLC, d/b/a Ultimate Fighting
Championship ("UFC")
PO Box 26959
Las Vegas, NV 89126-0959

May 3, 2018	Janet T. Jackson Designated Agent of NLRB
Date	Name
	/s/ Janet T. Jackson
	Signature

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 04
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlrb.gov
Telephone: (215)597-7601
Fax: (215)597-7658

September 19, 2018

Lucas K. Middlebrook, Esquire.
Seham, Seham, Meltz & Peterson, LLP
199 Main Street, Seventh Floor
White Plains, NY 10601

Re: ZUFFA, LLC, d/b/a Ultimate Fighting Championship ("UFC")
Case 04-CA-219498

Dear Mr. Middlebrook:

We have carefully investigated and considered the charge that ZUFFA, LLC, d/b/a Ultimate Fighting Championship ("UFC") has violated the National Labor Relations Act.

Decision to Dismiss: As a result of the investigation, I find that the charge lacks merit. The charge alleges that ZUFFA, LLC d/b/a Ultimate Fighting Championship (UFC) violated Section 8(a)(1) and (3) of the Act by refusing to renew (b) (6), (b) (7)(C) contract in retaliation for (b) (6), (b) Union and protected concerted activities. In (b) (6), (b) (7)(2018, mixed-martial arts (MMA) fighter (b) (6), (b) (7)(C) was scheduled to fight in (b) (6), (last bout under the terms of (b) (6), (contract with the UFC, but (b) (6), (opponent missed (b) (6), (weight limit. (b) (6), (b) (7)(C) then informed the UFC that (b) (6), (would not fight unless the UFC gave (b) (6), (additional money and added two fights to (b) (6), (contract. The UFC rejected (b) (6), (b) demands and advised (b) (6), (that it would pay (b) (6), (a fight purse and win bonus in satisfaction of the contract, even though (b) (6), (would not actually have to fight. Although there is ample evidence that (b) (6), (b) (7)(C) has publicly engaged in efforts to unionize MMA fighters since 2016, there is insufficient evidence to establish that the UFC's failure to renew (b) (6), (contract in (b) (6), (b) (7)(2018 was based on any protected activities. Rather, there is significant evidence suggesting that the breakdown in contract negotiations in (b) (6), (b) (7)(2018 occurred for nondiscriminatory reasons related to (b) (6), (demands. Because I find no unlawful discrimination, I find it unnecessary to decide whether (b) (6), (b) (7)(C) is a statutory employee.

To establish unlawful discrimination under Section 8(a)(3) and (1) of the Act, the General Counsel must establish that the employee's union or protected concerted activities were "a motivating factor" in an employer's adverse action. *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Initially, it is not clear that UFC's failure to renew a contract and continue to negotiate with (b) (6), (b) (7)(C) was even an adverse employment action. While a failure to renew an employment contract can be an adverse employment action akin to discharge in certain circumstances, this is not what occurred here. (b) (6), (b) (7)(C) contract expired by its terms and the parties failed to reach an understanding on a new agreement. The Act does not require any party to enter into a contract or to offer any specific

terms in a contract. Thus, it is not clear that UFC took any adverse employment action against (b) (6), (b) (7)(C) by failing to make a counteroffer or enter into a new fight contract.

Even assuming that an adverse action occurred, there is insufficient evidence that an unlawful motive contributed to the UFC's decision not to renew (b) (6), (b) (7)(C) fight contract. Indeed, UFC's conduct at key points benefitted (b) (6), (b) (7)(C) in a manner that belies any unlawful motive. First, the UFC arguably could have terminated (b) (6), (b) (7)(C) fight contract in 2017 after (b) (6), (b) refused to accept a bout against an opponent, but it instead extended (b) (6), (b) contract twice. These renewals occurred after (b) (6), (b) (7)(C) public support of unionization. Second, the UFC approved (b) (6), (b) (7)(C) Project (b) (6), (b) (7)(C) and pro-Union (b) (6), (b) (7)(C) for (b) (6), (b) (b) (6), (b) (7)(C) fight, which would have been visible for a national television audience, despite policies placing heavy restrictions on the display of third-party logos. Third, the UFC provided (b) (6), (b) (7)(C) with a discretionary allotment of $500 just prior to the scheduled (b) (6), (b) (7)(C) fight when (b) (6), (b) expressed concern over travel expenses. These decisions undermine (b) (6), (b) (7)(C) assertions that the UFC harbored animus against (b) (6), (b) for (b) (6), (b) protected activities. Finally, the investigation disclosed that negotiations broke down over the public manner in which (b) (6), (b) (7)(C) conducted negotiations with demands asking for up to a 222% increase over (b) (6), (b) then-current contract. It is not the proper role of the Board, in the absence of evidence pointing to animus or pretext, to second-guess UFC's business decisions not to continue to negotiate or renew (b) (6), (b) (7)(C) contract in response to these kinds of demands. See *W.R. Case & Sons Cutlery Co,* 307 NLRB 1457, 1464 (1992). Accordingly, I am refusing to issue Complaint in this matter.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlrb.gov and:

1) Click on E-File Documents;
2) Enter the NLRB Case Number; and,
3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlrb.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **October 3, 2018**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service

no later than October 2, 2018. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely**. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before October 3, 2018.** The request may be filed electronically through the ***E-File Documents*** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after October 3, 2018, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Dennis P. Walsh

DENNIS P. WALSH
Regional Director

Enclosure

cc: Wm. Hunter Campbell, Esquire
ZUFFA, LLC, d/b/a Ultimate Fighting Championship ("UFC")
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1701 Market Street
Philadelphia, PA 19103-2903

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