

**OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management**

MEMORANDUM OM 04-73

July 22, 2004

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Case Handling Instructions for All Cases Currently Being
Coordinated by the Division of Operations-Management or a
Regional Office

This memorandum sets forth instructions for cases currently being coordinated by the Division of Operations-Management or a Regional Office. Attached as an Appendix is a concise list of coordinated cases to detach and use as an easy reference guide.

I. Amercian Medical Response (AMR)

Related ULP charges against AMR were filed in Regions 12, 21, 27 and 28. The specific allegations in the related charges involve the Employer's maintenance of an overly-broad no solicitation provision and facially unlawful restrictions on the wearing and displaying of union pins and insignia. The investigations of these cases suggest that the Employer may maintain these restrictions as a corporate policy. The corporate policy may be set forth in the Employer's handbook that may have been distributed nationwide. Thus, these specific allegations in the charges raise issues with possible national impact. Region 27 has rescinded approval of a prior informal settlement agreement, authorized issuance of a complaint and agreed to serve as the lead Region in the coordination of the national issues for litigation. All remaining unrelated allegations have been severed for continued processing in the originating Region.

Regions are asked to fax to Region 27 Deputy Regional Attorney Sheryl S. Josephson and Deputy Assistant General Counsel Yvette Hatfield a copy of any related AMR charges which will or have been filed, are pending investigation or are the subject of complaint. Further, if any Region has secured a copy of any AMR handbook containing such provisions, please provide a copy and any evidence as to how broad it is in geographic application to DRA Josephson.

II. Angelica Textile Services

In or around January 2004, UNITE publicly announced the launching of a nationwide organizing campaign involving Angelica employees at approximately thirteen facilities that are not organized. Section 8(a)(1)(3) and (5) charges have been filed by the Union of Needletrades, Industrial and Textile Employees, AFL-

CIO, CLC (UNITE) in Regions 3, 8, 14, 16 and 21 against Angelica Textile Services (Angelica) an employer engaged in the operation of approximately 30 industrial laundry facilities across the United States. The Section 8(a)(1) allegations involve threats, interrogation, solicitation of grievances, and promises of benefits. The Section 8(a)(3) allegations involve discipline and discharge. The Section 8(a)(5) violations involve unilateral changes and failure to provide information. Region 3, Buffalo, will be the lead Region coordinating the handling of these charges.

If similar charges have been filed in your Region against Angelica, please fax a copy of your charges to Regional Director Helen Marsh, Region 3, and to Deputy to the Assistant General Counsel Beth Tursell. Each Region should complete the investigation of its charges. After the completion of the investigation, copies of agenda minutes and FIRS should be faxed to Region 3. Regions should not proceed to implement decisions or approve settlements or withdrawals until clearance is received from RD Marsh. After receiving clearance, each Region will issue dismissal or partial dismissal letters or approve any requests to withdraw charges or allegations of charges found not to be meritorious. The merit cases will be monitored by Region 3 and, if necessary, a decision will be made regarding consolidating the cases for trial. Any question about coordination of these cases should be referred to DAGC Tursell.

III. APWU Cases Involving Early Retirement Authorization

APWU has filed a charge in Region 26 alleging a violation of Section 8(a)(5) over bargaining related to an early retirement program. The Union asserts that after agreeing to request early retirement authorization from OPM and getting that authorization from OPM, the USPS then tacked on additional criteria for eligibility to which the APWU had not agreed. It appears that on 9/11/03, APWU filed suit in the US District court of the District of Columbia against the USPS seeking to compel expedited arbitration on this issue. The Union may file similar charges in other Regions. In the event you have a pending charge involving this matter, or receive one, the Region should contact Assistant to the General Counsel Shelley Korch.

IV. Beck Cases:

Please advise Assistant General Counsel Nelson Levin of any allegations that you hold in abeyance under these instructions or if complaint issues in a case raising these issues.

- A. The General Counsel has decided to present to the Board the question whether a union violates Section 8(b)(1)(A) by requiring objecting nonmembers to annually renew their objections. This matter is presently being litigated in *United Auto Workers, UAW and its Local 376 (Colt's*

Manufacturing Co., Inc.), 34-CB-2631 and 2632. Until the issue in this case is resolved, Regions should proceed as follows:

- If the annual objection issue is the only meritorious allegation in a charge, the Region should hold the charge in abeyance pending a decision by the Board on the annual objection issue.
 - If there are other allegations in the charge that the Region finds meritorious and that do not settle with appropriate reservations language, the Region should seek from the Union a *Jefferson Chemical Company* waiver as to the annual objection allegation. If such a waiver is obtained, the Region should hold the annual objection allegation in abeyance and proceed with the other unsettled allegations. If the *Jefferson Chemical* waiver is not obtained, the Region should contact AGC Levin. See OM 03-96.
- B. The General Counsel has decided to present to the Board the question whether a union has an obligation to explain to Beck objectors specifics regarding the financial assistance rendered to affiliates beyond the amount transferred to the affiliate organization and the percentage chargeable to objectors. This matter is presently being litigated in *Teamsters Local 579 (Chambers & Owen)*, 30-CB-4550. If the affiliates issue is the only meritorious allegation in a charge, the Region should hold the charge in abeyance pending a decision by the Board on this issue. If there are other allegations in the charge that the Region finds meritorious and that do not settle with appropriate reservations language, the Region should seek from the Union a *Jefferson Chemical Company* waiver as to the affiliates allegation. If such a waiver is obtained, the Region should hold the affiliates allegation in abeyance and proceed with the other unsettled allegations. If the *Jefferson Chemical* waiver is not obtained, the Region should contact AGC Levin.
- C. The General Counsel has decided to present to the Board the question of whether a union violates the Act because its initial Beck notice did not include the full amount of dues and the percentage reduction that objecting members would receive. The case that initially presented this issue has settled. *Brewery Workers, IBT (Pepsi Cola Bottlers)*, 8-CB-10102 is the current pending case that may allow the General Counsel to place this issue before the Board. The Regions are requested to advise AGC Levin of any charges that are filed which address this issue.

V. Beverly Enterprises

Region 6 will continue to be the lead Region with respect to all newly filed charges against Beverly and any of its subsidiaries. See OM 02-38, "Compliance and Possible Violations by Beverly California Corporation f/k/a

Beverly Enterprises with Corporate wide Order in Beverly II and Beverly III." Regions are to advise Region 6 and the Contempt Litigation and Compliance Branch of all arguably meritorious charges at all facilities covered by the corporate-wide Judgment in Beverly II and Beverly III prior to taking any action, including approval of a non-Board adjustment. Deputy Assistant General Counsel Elizabeth Kilpatrick is coordinating the Beverly cases for Operations.

VI. Cintas Corporation

- A. Section 8(a)(1) and (3) charges have recently been filed by the Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (UNITE!), in Regions 1, 4, 5, 6, 7, 9, 11, 12, 13, 16, 20, 21, 22, 25, 28, 29, 32 and 34 against Cintas Corporation (Cintas), an employer engaged in the laundry business and the supply of uniforms and other textiles. The charges arise out of an ongoing organizing campaign by UNITE among the employees of Cintas. Some of the charges that were filed allege that Cintas engaged in surveillance of hand billing activities, discouraged or prohibited employees from reading or receiving handbills and prohibited or interfered with hand billing by representatives of UNITE. Other charges allege that Cintas engaged in unlawful interrogations and other Section 8(a)(1) threats, and that it has disciplined or discharged named employees because of their activities on behalf of UNITE in violation of Section 8(a)(3). Region 4, Philadelphia will be the lead Region coordinating the handling of these charges.
- B. If similar charges have been filed in your Region against Cintas, please fax a copy of your charges to Regional Director Dorothy Moore-Duncan, Region 4 and to Assistant General Counsel Jim Paulsen. Each Region should complete the investigation of its charges. After the completion of the investigation, copies of agenda minutes and FIRs should be faxed to Region 4. Regions should not proceed to implement decisions, approve settlements or withdrawals until clearance is received from RD Moore-Duncan. For any charges or allegations of charges found not to be meritorious, after receiving clearance from Region 4, each Region will issue dismissal or partial dismissal letters or approve any requests to withdraw charges or allegations of charges set for dismissal.
- C. If charges, after being reviewed by Region 4, are found to be meritorious, the Region handling the investigation will draft the allegations of the complaint for which merit has been found and will send this WORD document to Region 4. Region 4 will inform Employer's counsel of any allegations having merit and will issue, absent settlement, a consolidated complaint covering all charges or portions of charges having merit. Meritorious charges will not be transferred to Region 4 and will retain their same case number. If a hearing is warranted, Region 4 will designate a

lead counsel and each Region will designate a co-counsel to handle the trial of the meritorious allegations investigated by that Region. After being given clearance by Region 4, each Region having meritorious charges will be responsible for discussing with Employer's counsel the terms of any proposed settlement. The terms and scope of such proposed settlement will need to be reviewed and cleared by RD Moore-Duncan. Any question about coordination of these cases should be referred to AGC Paulsen.

VII. Great Atlantic News, L.L.C. a/k/a The Newsgroup, Inc.

- A. Section 8(a)(1), (3) and (5) charges have been filed in several Regions against Great Atlantic News, L.L.C. a/k/a The Newsgroup, Inc., and against United Magazine Company d/b/a Triangle News Company, Incorporated. The charges arise out of the takeover of United Magazine Company (United) operations by Great Atlantic News (Great Atlantic), Great Atlantic's refusal to recognize and deal with various locals of the International Brotherhood of Teamsters and Great Atlantic's refusal to hire the former employees of United. To date, we have received copies of charges filed in Regions 6, 7 and 8. Region 6, Pittsburgh, will be the lead Region coordinating the handling of these charges.
- B. If similar charges have been filed in your Region, please fax a copy of your charges to Regional Director Gerald Kobell, Region 6 and to Deputy Assistant General Counsel Elizabeth Kilpatrick. Each Region should complete the investigation of its charges. After the completion of the investigation, copies of agenda minutes and FIRs should be faxed to Region 6 prior to implementation and Regions should not proceed to implement decisions or approve settlements or withdrawals until clearance is received from RD Kobell. Any question about coordination of these cases should be referred to DAGC Kilpatrick.

VIII. Greyhound Lines, Inc.

- A. Most of the Greyhound cases relating to the 1990 strike have been completed and are closed. The lead case, Case 30-CA-10681-2, is still open pending distribution of the backpay under the parties' settlement agreement. Region 32 is working to finalize the backpay distribution for all discriminatees pursuant to the settlement. Please refer any compliance questions to Supervisory Compliance Officer Andrew Young in Region 32.
- B. Inquiries related to the 1990 strike cases should be directed to Assistant to the General Counsel Shelley Korch for further referral.

IX. UNITE

- A. Section 8(b)(7)(C) charges are pending in Regions 2 and 5 which were filed by H & M--Hennes & Mauritz against UNITE. The charges allege recognitional picketing for more than 30 days without the filing of a valid petition. Picketing began in late August at the Employer's flagship stores in Manhattan and their warehouse facility in Secaucus, New Jersey. A Section 8(b)(7)(C) charge was also filed in Region 22. However, this charge was withdrawn, but will likely be refiled.
- B. There is one incident of picketing in Philadelphia, but no charge has been filed as of yet. There has been mass picketing in the Manhattan and Washington area. The Union has announced plans to expand their activities.
- C. Region 2 will coordinate the handling of these cases. As soon as a charge is filed, please fax a copy of the charge to Regional Director Celeste Mattina, Region 2 and to Assistant General Counsel James Paulsen. Each Region will investigate the charge(s) filed in that Region in a priority manner and immediately prepare a draft final investigative report or agenda minute, with proposed recommendations for the disposition of the charge. This document should then be faxed to RD Mattina. No decision on the merits of a case should be announced to the parties without clearance by Region 2. Region 2 will review the cases and make a decision on how to proceed, including deciding whether any submission of the cases to the Division of Advice is appropriate. If the cases are found to have merit and it is concluded that a nationwide order to enjoin recognitional picketing is necessary, Region 2 will handle the district court litigation.
- D. If you have any questions about this matter, please feel free to contact AGC Paulsen or to speak directly with Field Attorney Greg Davis (212-264-0342) or Supervisory Attorney Leah Jaffe (212-264-0315) in Region 2 who will lead the coordination of the investigation of these cases.

X. UPS/Teamsters Issues Relating to Accretion

- A. Region 9 has received a series of charges against United Parcel Service (UPS) and the Teamsters filed by historically excluded administrative employees who were recently "accreted" into the existing Teamsters bargaining unit by agreement of the parties. Approximately 2500 employees nationwide have apparently been affected by the accretion. The charges may not specifically mention the accretion issue; they could allege Section 8(a)(2), (3), and (5), or 8(b)(1)(A) conduct, including unlawful assistance, unilateral change and union security issues.

- B. Region 9 is the lead Region with respect to these cases. Please contact Region 9's Regional Attorney Earl Ledford, if you receive or have received charges against UPS and/or Teamsters Locals raising such issues. Please provide the Region a copy of such charges and the status of the investigation(s). Deputy Assistant General Counsel Elizabeth Kilpatrick will address any questions concerning these coordination efforts.

XI. USPS Refusal-to-Provide-Information Cases

- A. OM 03-18, dated November 6, 2002, announced new guidelines for handling refusal-to-provide-information charges against the USPS filed by all postal service unions. As set forth in the OM, if a Region concludes that departure from these guidelines is warranted because of special circumstances, it should first consult with Regional Director Gerald Kobell of Region 6, prior to taking any action. Deputy Assistant General Counsel Elizabeth Kilpatrick will address any questions concerning these coordination efforts.
- B. Region 6 will continue to coordinate and monitor processing of these cases. Region 6 will also consider whether consolidation or clustering of cases for trial or seeking remedial relief on a wider basis is appropriate. In order to maintain oversight of these cases, each Region should send Region 6 copies of dispositions (withdrawal approval letters, settlement agreements, draft complaints, and ALJDs) in all refusal-to-provide-information cases filed against the USPS.
- C. Prior to taking any final action on cases involving the violation of any provision(s) of outstanding court judgments regarding the USPS' refusal to provide information, Regions are to contact the Contempt Litigation and Compliance Branch. Revised OM 03-18, Attachment 3, lists the current outstanding court orders involving refusal-to-provide-information violations. Updated information concerning any subsequent judgments entered against the USPS can be obtained by utilizing the Appellate Court Case Lookup System. See OM 03-04, dated October 18, 2002.

XII. Wal-Mart Stores, Inc. and Sam's Club

- A. The United Food and Commercial Workers Union has initiated a national effort to organize employees of Wal-Mart Stores, Inc. and Sam's Club throughout the United States. In addition, other unions have attempted to organize other Wal-Mart Stores, Inc. and Sam's Club employees.
- B. Regions are reminded of the outstanding instructions for charges involving Wal-Mart Stores, Inc. and Sam's Club, contained in OM 00-24, issued on April 11, 2000. In particular, until further notice, Regions should take no final action (i.e., issuance of complaint, dismissal, solicitation of

withdrawal, or approval of a settlement agreement) regarding Wal-Mart Stores, Inc., or its subsidiaries, including Sam's Club, absent clearance from the Division of Advice.

- C. Regions should continue to forward copies of all unfair labor practice charges and representation cases involving Wal-Mart Stores, Inc, its subsidiaries, including Sam's Club, to the Division of Advice and to the Division of Operations-Management, attention Deputy Assistant General Counsel Terry Morgan.

/s/
R. A. S.

Attachment

Release to the Public

cc: NLRBU

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Appendix to OM

Case Names

<u>Amercian Medical Response (AMR)</u>	Region 27 and DAGC Yvette Hatfield
<u>Angelica Textile Services</u>	Region 3 and DAGC Beth Tursell
<u>APWU Cases</u> Involving Early Retirement Authorization	AGC Shelley Korch
<u>Beck Cases</u>	AGC Nelson Levin
<u>Beverly Enterprises</u>	Region 6 and DAGC Elizabeth Kilpatrick
<u>Cintas Corporation</u>	Region 4 and AGC James Paulsen
<u>Great Atlantic News, L.L.C. a/k/a The Newsgroup, Inc.</u>	Region 6 and DAGC Elizabeth Kilpatrick
<u>Greyhound Lines, Inc.</u> Compliance Issues	Region 32 and AGC Shelley Korch
<u>UNITE</u>	Region 2 and AGC James Paulsen
<u>UPS/Teamsters</u> – Issues relating to accretion	Region 9 and DAGC Elizabeth Kilpatrick
<u>USPS</u> – Refusal-to-provide-information cases	Region 6 and DAGC Elizabeth Kilpatrick
<u>Wal-Mart Stores, Inc. and Sam's Club</u>	DAGC Terry Morgan