OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 07-59 (CH) May 17, 2007

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

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Consolidating Compliance Issues with ULP Complaints - Expediting Casehandling in "Default" Cases

Memorandum OM 98-12, entitled "Placing Greater Emphasis on Compliance Issues During Initial Stages of Case Processing," discussed the advisability of consolidating compliance matters with initial ULP complaints in the context of steps that Regions could take, commensurate with the expenditure of available resources, to maximize the likelihood that meaningful compliance results would be secured as early as possible in the casehandling process. Among those situations where consolidation was encouraged was "where the respondent has, or is likely to, default, and a motion for summary judgment will be filed (in such cases, even if the backpay period had not been tolled, the backpay accumulated to date may be liquidated in the initial summary proceeding)." [1]

In situations where a respondent fails to file an answer to a ULP complaint and the Region obtains a default order, it is also often necessary to initiate supplemental proceedings to liquidate the amounts due, or to obtain the respondent's evidence relating to the disposition of assets or to investigate possible derivative liability of another party where the respondent asserts an inability to pay.

In a limited number of cases, consistent with the goals set forth in Memoranda OM 98-12, Regions have successfully consolidated the compliance aspects of cases with the underlying ULP proceeding, thereby substantially reducing the delays inherent in the "traditional" bifurcated casehandling approach. However, a recent review of cases in which summary Board orders have been obtained, identified a number of instances in which the initial liability and compliance phases of cases were not

---

[1] "Default cases" constitute only one of a number of types of situations in which Regions have been urged to take full advantage of their authority to litigate compliance issues at the earliest possible stage of unfair labor practice cases. See Memorandum GC 02-04 – "Best Practices in Compliance Cases." Regions should carefully review OM Memorandum 98-12, which describes other situations in which the use of such procedures is encouraged, and should be sure that no opportunity to streamline the compliance process is lost.

consolidated prior to seeking court enforcement. This has sometimes resulted in significant delays, ranging from several months, to years, in obtaining enforceable money judgments in these cases.

With respect to "default" situations (i.e., no-answer cases like those described above), Regions should consolidate the compliance aspect of the case with the underlying liability phase of the case as soon as feasible and, in any case, prior to seeking court enforcement, unless there are compelling reasons for not doing so.[2] Thus, where a respondent is either likely to default, or has defaulted, with respect to an unfair labor practice complaint, Regions should, prior to submitting the case for court enforcement, normally adopt one of the following approaches to expedite the casehandling process:

1) Issue a consolidated ULP complaint and compliance specification at the initiation of proceedings and, following respondent's failure to answer the consolidated complaint and specification, file a motion seeking entry of a summary Board Order covering both the complaint and the compliance specification;
2) Following a respondent's failure to answer a complaint, issue the compliance specification and, following failure to answer the specification, file a motion seeking entry of a summary Board Order covering both the complaint and the compliance specification;
3) Following entry of an initial summary Board Order, issue the compliance specification and, following failure to answer the specification, obtain a summary supplemental Board Order.

Exercising any of these options should result in the liquidation of monetary liability earlier in the proceedings than is possible utilizing the "traditional" bifurcated approach, by allowing for the consolidation of enforcement proceedings before the courts of appeals. [3]

---

[2] While we recognize that in certain cases the remedial issues may involve complex questions of liability or require extensive investigation and thus may not lend themselves to this approach, in most cases the issuance of a compliance specification early in the process could expedite case processing and enhance the likelihood of remedial success. Absent exceptional circumstances, this approach is clearly appropriate where a respondent has gone out of business. However, it should also be utilized in all default situations where liquidating the amount due (even partially, if backpay may continue to accrue) may facilitate compliance or pave the way for collection activities. Section 10508.3 of the Compliance Case Handling Manual sets forth the factors to be considered in connection with the consolidation of compliance issues with unfair labor practice issues in a complaint.

[3] In order to monitor and evaluate the effectiveness of this initiative, with respect to any "default" case in which compliance issues are <u>not</u> consolidated with the underlying unfair labor practice determination phase of the case prior to submission for enforcement, Regions should include in the case file a brief statement explaining why the compliance and unfair labor practice phases of the case were not consolidated.

If you have any questions regarding this memorandum you should direct your inquiry to your Operations-Management representative or the Contempt Litigation and Compliance Branch.

/s/
R. A. S.

cc: NLRBU

Release to the Public

MEMORANDUM OM 07-59 (CH)