

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 09-68(CH)

June 18, 2009

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

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Processing of Unfair Labor Practice Charges Arising out of the Current  
Dispute Involving UNITE HERE, Workers United and SEIU

There are pending before the Agency numerous petitions and charges raising issues related to the dispute between UNITE HERE, Workers United and/or SEIU. On May 13, Change to Win (CTW), notified the Executive Secretary that UNITE HERE and SEIU, including its affiliate Workers United, had agreed to submit jurisdictional issues related to numerous pending petitions to a dispute resolution procedure established by the Change to Win Constitution. On May 14, the Executive Secretary's Office sent letters to a number of Regions instructing the receiving Region that the subject petition was to be held in abeyance for 30 days from the date of the letter to enable Change to Win to attempt to resolve the issues in dispute in accordance with its Constitution.

On June 3, 2009, CTW informed the Executive Secretary that it was rescinding its request for the Board to hold processing of the petitions in abeyance. Regions with petitions pending were thereafter instructed to resume case procession.

The current dispute involves the decision of some of the constituent parts of UNITE HERE, including some local unions and some regional district councils, to disaffiliate and to affiliate with the Service Employees International Union (SEIU). As part of the effort to affiliate with the SEIU, these former constituent parts of UNITE HERE have formed a new organization, Workers United. UNITE HERE has challenged the validity of the attempted disaffiliation effort claiming that it is not allowed under the UNITE HERE Constitution. As a result of this dispute, it appears that many employers have received letters both from UNITE HERE and from Workers United, or one of its constituent locals or regional councils, claiming to be the entity that represents the employer's employees. In the face of these competing claims, employers have taken a variety of actions. Some have ceased remitting dues to either side until the internal union dispute is resolved. Others have taken other actions that are alleged in pending charges as unilateral changes. Some of the employers have filed RM petitions claiming that the conflicting claims raise a "question concerning representation" (QCR) warranting a representation election.

Careful consideration has been given to how Regions should proceed in the face of this complex situation. Resolution of many of the C cases ultimately will require a determination of whether the internal union dispute has raised a QCR. Accordingly, expeditious processing of the petitions by Regional Directors to permit Board review of this basic issue, upon proper request, is essential. Where the QCR issue is present in

the pending C cases, the General Counsel has decided to defer decision until the Board has an opportunity to address the issue in the pending R cases. Such a Board resolution could occur in an R case arising in the same unit in which the unfair labor practice case is pending or in another case that will establish a controlling rule. Regions should complete their investigations of such C cases, but delay implementation of their determinations until authorized. On the other hand, it may be possible to resolve some C cases without having to resolve the representational issue. As detailed below, Regions should continue processing of those cases. Finally, there may be some C cases that implicate the representational issue but involve extensive and serious unfair labor practices allegations. If a Region believes it has such a case, it should consult as described below as to how to proceed.

To summarize, charges generally fall into three types:

**Type 1** unfair labor practice cases are those in which a charge arises in a unit in which a representation petition is also pending. For example, we have cases where a Workers United affiliate has demanded recognition in a previously recognized unit and the employer has refused to accord the Union recognition. Workers United has filed a Section 8(a)(5) charge alleging the employer is refusing to meet and confer and the employer has filed an RM petition. Reaching a determination of the allegations raised by this charge appears to require a resolution of the issues raised by the pending RM petition. In such a case the Region should fully investigate the charge but delay implementation of its determination pending the resolution of the issue raised by the petition.

**Type 2** cases are similar to Type 1 in that they require determination of whether one of the rival factions is the existing representative, but in Type 2 cases no R case petition has been filed. For example, in some charges the Charging Party alleges it is the rightful representative and the employer has made an unlawful unilateral change by refusing to remit dues to it and/or to grant access to its representatives or that the employer is providing unlawful assistance to the other faction involved in the UNITE HERE dispute.<sup>1</sup> In other instances CB charges allege that one of the factions unlawfully accepted recognition as the representative of certain unit employees. Even though no related petition is pending with respect to the units involved in these charges, the resolution of the issues raised in the petitions pending elsewhere would appear to have the potential to resolve or shed light on the issues raised by such charges. Again, to avoid having the General Counsel determine what is essentially a representational issue, a Region having a charge or charges in these circumstances, while investigating the charge(s) fully, should not implement its determination in the charge(s) at this time.

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<sup>1</sup> It is likely that in many such cases, the employer's conduct has been prompted by a sincere and innocent confusion regarding the identity of the employees' collective-bargaining representative and not by any intent to evade contractual obligations or deny employees their rights under the Act. These circumstances will be fully explored in the investigation of the cases and be given due consideration in evaluating whether or not to issue a complaint.

We will closely monitor the representation cases before the Board for guidance as to what should be done with the pending petitions. As matters develop, we will give further guidance on the processing of Type 1 and 2 cases.

**Type 3** cases involve allegations that are tangentially related to the ongoing UNITE HERE dispute but can be resolved without having to reach the representational issues presented in the various pending petitions. For example such cases might involve allegations of 8(a)(1) threats or interrogations of employees. Because the issues in these charges do not require the General Counsel to reach representation case issues that more appropriately should be addressed by the Board, Regions should continue to process these charges to disposition.

The UNITE HERE dispute has generated a great deal of public interest and numbers of public inquiries. Consequently, there is an ongoing need for Headquarters to know about all of the cases pending arising from this dispute and the status of those cases. In addition, with respect to the charges, there is a need to maintain a consistent approach among the Regions and to ensure that the General Counsel's policies are being followed. For these reasons, upon determining the appropriate course for a particular UNITE HERE case, Regions should send DAGC Charles Posner a memorandum outlining how they intend to proceed. The submission should note the case name and number of the C case and recite the allegations raised. The submission should also contain a description of how the C case allegations do or do not relate to the pending representational issues and the Region's analysis and recommendation about how to proceed. If there are related representation cases please provide the name, number and nature of the pending R case. DAGC Posner will communicate unfair labor practice case handling instructions to the Regions.

Finally, there may be cases that appear to fall into Type 1 or Type 2 categories but involve unfair labor practices of such a serious nature that, in the view of the Region, delaying action pending Board action with respect to the R case issue would not be warranted. Such a case might involve allegations of a withdrawal of recognition combined with massive unilateral changes. If a Region believes it has such a case, its submission should include an analysis and recommendation as to why deferral would not be appropriate. We will promptly provide a response to the recommendation provided by a Region.

If you have any questions concerning the matters described in this message, please feel free to contact me.

/s/  
R.A.S.

cc: NLRBU  
Release to Public

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