



Memorandum of Understanding Between the General Counsel of the National Labor Relations Board and the Equal Employment Opportunity Commission (November 16, 1993)

The General Counsel of the National Labor Relations Board (NLRB) and the Equal Employment Opportunity Commission (EEOC) enter into this agreement in order to establish a procedure for coordinating the enforcement of Title I of the Americans with Disabilities Act (ADA) and Section 8 of the National Labor Relations Act (NLRA).

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November 16, 1993

1. When a charge is filed with a Regional Office of the NLRB alleging that the duty to bargain under Section 8(a)(5), Section 8(b)(3) and/or Section 8(d) of the NLRA

was breached by either an employer or a union, and the resolution of that charge would require an interpretation of the charged party's duties under the ADA, the General Counsel will, upon completion of investigation, consult with the EEOC's Office of Legal Counsel regarding the applicability of the ADA.

2. When a charge is filed with a field office of the EEOC alleging discrimination by either an employer or a union in violation of the ADA, and the resolution of that charge would require an interpretation of the charged party's duties under the NLRA, the EEOC will, upon completion of the investigation, consult with the NLRB's Associate General Counsel, Division of Advice regarding the applicability of the NLRA.
3. EEOC and the NLRB shall share any information relating to the employment policies and practices of a respondent, employer or union that may assist each agency in carrying out its responsibilities under this agreement. Such information shall include, but is not limited to, complaints, charges, and investigative files.
4. (a) When the NLRB receives information obtained by EEOC, it shall observe the confidentiality requirements of section 706(b) and section 709(e) of the Civil Rights Act of 1964, as amended, (42 USC 2000e-5(b) and 2000e- 8(e)), as incorporated by section 107(a) of the ADA, as would EEOC, except in cases where the Board receives the same information from a source independent of the EEOC. Questions concerning the confidentiality requirements of Title I shall be directed to the Associate Legal Counsel for Legal Services, Office of Legal Counsel, EEOC.
(b) NLRB documents which are shared during this process constitute part of the Agency's investigative files compiled for law enforcement purposes. In the event that any of the parties to the EEOC proceeding, or any other persons, request permission to inspect or copy any of these documents, apart from documents that are already in the public domain (such as pleadings), EEOC will resist the demand for their production. Consistent with the Freedom of Information Act, the NLRB would not produce affidavits or other non-public evidentiary materials while a case is pending. However, after a case is closed, the NLRB is willing to release some case file documents pursuant to a request under limited circumstances. Accordingly, before releasing or disclosing information from any of the materials disclosed to it, EEOC will obtain the permission of the General Counsel of the NLRB pursuant to 29 CFR Section 102.118.

5. When an unfair labor practice charge is filed by an individual with a disability alleging that his/her collective bargaining representative has failed to fairly represent him/her, and that individual has also filed a charge with the EEOC alleging that, by the same conduct, the collective bargaining representative has violated the ADA, the NLRB will conduct a preliminary investigation. If the charge is clearly nonmeritorious, the NLRB, absent withdrawal, will dismiss it. In all other cases, the NLRB will defer the case for a reasonable period, pending the completion of the investigation by EEOC. If EEOC finds cause to believe that the ADA has been violated and successfully conciliates the charge, and further proceedings are not necessary to effectuate the purposes of the NLRA, the NLRB will seek a withdrawal of the charge before it. Absent such withdrawal, the NLRB will dismiss. If conciliation fails, the NLRB will consult with the EEOC and will determine whether to defer the case for a further period or to resume its processing of the case. If the EEOC finds no cause to believe that discrimination has occurred, the NLRB will resume processing of the unfair labor practice charge.
6. Where the NLRB has deferred an unfair labor practice charge under paragraph 5. above, EEOC will not defer such charges to the State FEP agency.
7. When an unfair labor practice charge is filed by an individual with a disability alleging that his/her collective bargaining representative has failed to fairly represent him/her regarding accommodating his/her disability in the workplace, and that disabled individual has not filed a charge with the EEOC alleging that the collective bargaining representative has violated the ADA, the NLRB will notify the charging party in writing of the right to file such a charge under the ADA. The NLRB will then process the charge in the normal course. However, if the charging party or the EEOC notifies the NLRB of the filing of a charge with the EEOC, then the NLRB will process the charge in accordance with paragraph 5. above.
8. If a charge is filed by an individual without a disability, alleging that an accommodation provided to an individual with a disability has violated the NLRA, the procedure in paragraph 1. above will be followed.
9. The parties to this agreement will engage in periodic consultations in order to review its implementation.
10. (a) This agreement may be modified at any time, provided that such modification is by mutual consent and in writing.

(b) This agreement may be terminated by either party under 30 days written notice of the other party.