



MEMORANDUM OF UNDERSTANDING

Between

THE NATIONAL LABOR RELATIONS BOARD

And

THE OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION

U.S. DEPARTMENT OF LABOR

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to facilitate coordination between the National Labor Relations Board (NLRB) and the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) concerning the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.*, and Occupational Safety and Health Act of 1970 (OSH Act), particularly its anti-retaliation provision, section 11(c), 29 U.S.C. 660(c) (section 11(c)).

II. BACKGROUND

A. Section 7 of the NLRA in relevant part provides: "Employees shall have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. " Section 8 of the NLRA prohibits unfair labor practices which restrain or coerce employees in the exercise of the rights guaranteed in section 7. If an employee or labor organization files a charge with the NLRB, that agency investigates the case. If the General Counsel determines that the case has merit, unfair labor practice proceedings are instituted. Cases are heard by administrative law judges (ALJs) of the NLRB. The judges' decisions are

appealable to the Board (as used in this MOU, the presidentially appointed Members of the NLRB) and thereafter may be reviewed by a United States court of appeals.

B. Section 11(c) (1) of the OSH Act provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." If an employee believes that he or she has suffered a violation of section 11(c), he or she may file a complaint with OSHA within thirty days of the violation. If the Secretary of Labor believes that section 11(c) has been violated, the Secretary, represented by a Regional Solicitor's Office, files suit in a United States district court, whose decision is reviewable by a United States court of appeals.

C. Many employee safety and health activities are protected under both Acts. For example, both statutes protect the right of employees to complain to management about unsafe or unhealthful working conditions; the NLRA requires this activity to be concerted. Therefore, in 1975 OSHA and the NLRB entered into a Memorandum of Understanding, 40 FR 26083 (June 20, 1975), providing that enforcement actions to protect such safety and health activities should primarily be taken under the OSH Act rather than the NLRA. However, experience of both agencies in the ensuing four decades has made them realize that both Acts have equally important roles in protecting these activities and that the determination as to the appropriate enforcement action must be made on a case-by-case basis in order to obtain the best possible relief for employees and advance the interests of the agencies. Therefore, the 1975 Memorandum of Understanding is hereby rescinded.

III. AREAS OF COOPERATION

A. If an employee files a section 11(c) complaint with OSHA and the safety or health activity appears to have been undertaken in concert with or on behalf of co-workers, including, but not limited to, the filing of a grievance under a collective bargaining agreement:

- 1.) If the complaint is timely, OSHA shall inform the employee of the additional right to file a charge with the NLRB and of the contact information for the appropriate NLRB Regional Office. See Appendix for contact information. OSHA shall notify the appropriate NLRB Regional Director or his or her designee in writing that it has informed an employee about NLRB rights and provide the names of the employee and the employer and their contact information. If the employee subsequently files a charge with the NLRB, the Regional Director shall inform the appropriate Assistant Regional Administrator for Whistleblower Protection Programs (ARA), or his or her designee, in the appropriate OSHA Regional Office of this filing and of significant developments in the case.
- 2.) If the complaint is untimely, OSHA will advise the complainant that he or she may file a charge with the NLRB and that the NLRB time limit to file (6 months) is longer than OSHA's (1 month) and therefore OSHA recommends that the complainant contact the NLRB as soon as possible to discuss his or her rights. OSHA personnel should then give the complainant the contact information for the complainant's appropriate NLRB Field Office.

B. If an employee or labor organization files a charge with the NLRB and the Regional Director believes that the employer may have violated section 11(c), the Regional Director shall notify the charging party that there is also the right to file a complaint with OSHA if the complaint is filed within thirty days of the adverse

action and shall provide contact information for OSHA (See Appendix for contact information). The Regional Director shall notify the appropriate ARA in writing that he or she has informed the employee about OSHA rights and provide the name of the employee and the employer and their contact information. If a section 11(c) complaint is filed with OSHA, the ARA shall inform the Regional Director of all significant developments in the case.

C. If both a section 11(c) complaint involving potentially concerted activity and an NLRB charge involving protected activity related to occupational safety or health are filed by the same complainant for the same adverse action, each agency shall inform the other of the initiation of the cases. The NLRB and OSHA shall discuss whether one agency should postpone further action pending the outcome of the other agency's case, defer to the other agency's outcome, or continue to proceed with each case. The agencies shall endeavor to determine which course of action provides the best possible outcome for the complainant and is in the best interest of the agencies with due consideration of the different legal requirements and remedies under their respective laws, as well as of other relevant factors. They agree to cooperate with each other to the fullest extent possible in these cases.

D. The NLRB and OSHA will share information they receive about possible violations of each other's statutes. If in the course of investigating or litigating a case, the NLRB discovers information relating to possible violations of OSHA standards, regulations, or the general duty clause, 5 U.S.C. 654(a)(1), the NLRB shall timely provide that information to OSHA. If in the course of inspection, investigation, or litigation, OSHA discovers information relating to a possible violation of the NLRA in an NLRB case of which it is aware, OSHA shall provide that information to the NLRB.

E. The points of contact for implementing this MOU at the regional level for OSHA are the ARAs. The points of contact for the NLRB at the regional level are the Regional Directors. The points of contact for implementing this MOU at the national level are the officials listed in the Appendix. If an OSHA ARA or NLRB Regional Director designates another official to be the point of contact or if there is new contact information, the agency which appoints a designee or has other new contact information will promptly notify the point of contact for the other agency. Matters affecting program procedures and policy issues will be handled by the respective national headquarters office of each agency.

F. The agencies agree that training and education are important for the implementation of this MOU. To the fullest extent possible, each agency shall provide training to appropriate personnel from the other agency. The NLRB shall train appropriate OSHA personnel on what constitutes concerted activity under section 7 of the NLRA, what constitutes an unfair labor practice under section 8(a) of the NLRA, and on the basic procedures for investigating and adjudicating unfair labor practice charges. OSHA shall train appropriate NLRB personnel on section 11(c) of the OSH Act. OSHA shall also provide basic training to them on OSHA standards, recordkeeping regulations, and the general duty clause. The focus of the training shall be on making NLRB generally aware of occupational hazards that may come to light during the course of NLRB investigations and litigation.

IV. IMPLEMENTATION

The NLRB official responsible for the overall implementation of this agreement is the General Counsel. The General Counsel executes this agreement under the authority of 29 U.S.C. 153(d).

The OSHA official responsible for the overall implementation of this agreement is the Assistant Secretary of Labor for Occupational Safety and Health. The Assistant Secretary executes this agreement under the authority of 29 U.S.C. 656(c)(1) and 29 U.S.C. 660(c).

V. AMENDMENT AND TERMINATION

This Agreement may be amended or modified upon written agreement by both parties to the Agreement. The Agreement may be terminated upon ninety (90) days written notice by either party.

VI. LEGAL EFFECT

Nothing in this MOU is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions, including OSHA's authority under the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*, and the NLRB's authority under the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person. This MOU is effective upon signature by both parties.

This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations.

VII. RESOLUTION OF DISAGREEMENTS

Should disagreements arise about the interpretation of the provisions of this agreement or amendments and/or revisions thereto that cannot be resolved at the

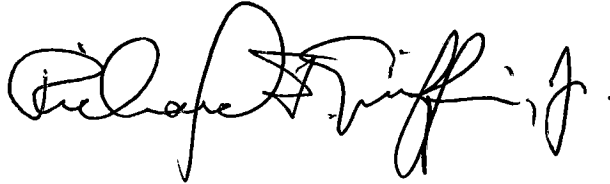
operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration.

Dated: 1/12/2017

RICHARD F. GRIFFIN, JR.

General Counsel

National Labor Relations Board



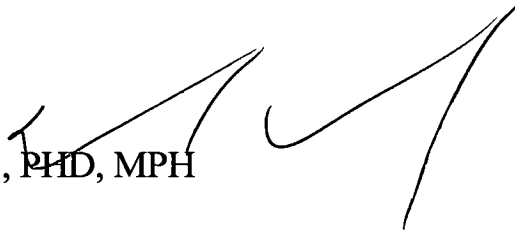
Dated: 2017

DAVID MICHAELS, PHD, MPH

Assistant Secretary

Occupational Safety and Health Administration

U.S. Department of Labor



Attachments

APPENDIX

POINTS OF CONTACT UNDER THIS MOU

A. Points of Contact for Implementation of MOU at National Office Level

OSHA

Director, Directorate of Whistleblower Protection Programs

200 Constitution Ave, NW, Rm. N-4618

Washington, DC 20210

(202) 693-2199

OSHA.DWPP@dol.gov

NLRB

Associate to the General Counsel, Division of Operations-Management

1015 Half Street, SE, Rm. 6057

Washington, DC 20570

(202) 273-2888

Beth.Tursell@nrlb.gov

B. NLRB Contact Information at the Regional Level

1. National Labor Relations Board

10 Causeway Street, Room 601

Boston, MA 02222

Phone; (617) 565-6700

Email: jack.walsh@nrlb.gov

2. National Labor Relations Board

26 Federal Plaza, Rm. 3614

New York, NY 10278

Phone: (212) 264-0330

Email: karen.fernback@nlrb.gov

3. National Labor Relations Board

130 S. Elmwood Avenue, Suite 630

Buffalo, NY 14202

Phone: (716) 551-4935

Email: paul.murphy@nlrb.gov

4. National Labor Relations Board

615 Chestnut Street, 7th Fl.

Philadelphia, PA 19106

Phone: (215) 597-7608

Email: dennis.walsh@nlrb.gov

5. National Labor Relations Board

100 South Charles Street, Suite 600

Baltimore, MD 21202

Phone: (410) 962-2737

Email: charles.posner@nlrb.gov

6. National Labor Relations Board

1000 Liberty Avenue, Rm. 904

Pittsburgh, PA 15222

Phone: (412) 395-6844

Email: nancy.wilson@nrlb.gov

7. National Labor Relations Board

477 Michigan Ave, Rm. 300

Detroit, MI 48226

Phone: (313) 226-3210

Email: terry.morgan@nrlb.gov

8. National Labor Relations Board

1240 East 9th St., Rm. 1695

Cleveland, OH 44199

Phone: (216) 522-3725

Email: allen.binstock@nrlb.gov

9. National Labor Relations Board

550 Main Street, Rm. 3003

Cincinnati, OH 45202

Phone: (513) 684-3621

Email: garey.lindsay@nrlb.gov

10. National Labor Relations Board

233 Peachtree Street, NE,

Harris Tower, Suite 1000

Atlanta, GA 30303

Phone: (404) 331-2862

Email: claud.harrell@nlrb.gov

11. National Labor Relations Board

201 East Kennedy Blvd., Suite 530

Tampa, FL 33602

Phone: (813) 228-2646

Email: margaret.diaz@nlrb.gov

12. National Labor Relations Board

209 South LaSalle Street, Suite 900

Chicago, IL 60604

Phone: (312) 353-7574

Email: peter.ohr@nlrb.gov

13. National Labor Relations Board

1222 Spruce St., Room 8.302

Saint Louis, MO 63103

Phone: (314) 539-7760

Email: leonard.perez@nlrb.gov

14. National Labor Relations Board

600 South Maestri Place, 7th Fl.

New Orleans, LA 70130

Phone: (504) 589-6374

Email: kathleen.mckinney@nlr.gov

15. National Labor Relations Board

819 Taylor St., Rm 8A24

Fort Worth, TX 76102

Phone: (817) 978-2938

Email: martha.kinard@nlr.gov

16. National Labor Relations Board

212 3rd Avenue, Suite 200

Minneapolis, MN 55401

Phone: (612) 348-1796

Email: nicole.burgess@nlr.gov

17. National Labor Relations Board

915 2nd Avenue, Room 2948

Seattle, WA 98174

Phone (206) 220-6310

Email: ronald.hooks@nlr.gov

18. National Labor Relations Board

901 Market Street, Room 400

San Francisco, CA 94103

Phone: (415) 356-5140

Email: jill.coffman@nrlb.gov

19. National Labor Relations Board

888 South Figueroa St., 9th Fl.

Los Angeles, CA 90017

Phone: (213) 894-5204

Email: william.cowen@nrlb.gov

20. National Labor Relations Board

20 Washington Place, 5th Fl.

Newark, NJ 07102

Phone: (973) 645-3240

Email: david.leach@nrlb.gov

21. National Labor Relations Board

575 N. Pennsylvania St., Rm. 238

Indianapolis, IN 46204

Phone: (317) 226-7401

Email: patricia.nachand@nrlb.gov

22. National Labor Relations Board

1961 Stout Street, Suite 13-103

Denver, CO 80294

Phone: (303) 844-6635

Email: paula.sawyer@nlrb.gov

23. National Labor Relations Board

2600 North Central Ave., Suite 1400

Phoenix, AZ 85004

Phone: (602) 640-2082

Email: cornele.overstreet@nlrb.gov

24. National Labor Relations Board

Two MetroTech Center, Suite 5100

Brooklyn, NY 11201

Phone: (718) 330-7700

Email: kathydrew.king@nlrb.gov

25. National Labor Relations Board

11500 W. Olympic Blvd., Suite 600

Los Angeles, CA 90064

Phone: (310) 307-7306

Email: mori.rubin@nlrb.gov

26. National Labor Relations Board

1301 Clay Street, Suite 300N

Oakland, CA 94612

Phone: (510) 637-3260

Email: valerie.hardy-mahoney@nlrb.gov

C. OSHA Contact Information at the Regional Level for Section 11(c) Cases

1. U.S. Department of Labor/OSHA

JFK Federal Building

25 New Sudbury St., Room E340

Boston, MA 02203

Phone: (617) 565-9860

Fax: (617) 565-9827

2. U.S. Department of Labor/OSHA

201 Varick Street, Room 670

New York, NY 10014

Phone: (212) 337-2378

Fax: (212) 337-2371

3. U.S. Department of Labor/OSHA

The Curtis Center, Suite 740 West

170 S. Independence Mall West

Philadelphia, PA 19106-3309

Phone: (215) 861-4900

Fax: (215) 861-4904

4. U.S. Department of Labor/OSHA
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW, Room 6T50
Atlanta, GA 30303
Phone: (678) 237-0400
Fax: (678) 237-0447

5. U.S. Department of Labor/OSHA
230 South Dearborn St, Rm 3244
Chicago, IL 60604
Phone: (312) 353-2220
Fax: (312) 353-7774

6. U.S. Department of Labor/OSHA
525 Griffin Street, Suite 602
Dallas, TX 75202
Phone: (972) 850-4145
Fax: (972) 850-4149

7. U.S. Department of Labor/OSHA
Two Pershing Square
2300 Main Street, Suite 1010
Kansas City, MO 64108
Phone: (816) 283-8745
Fax: (816) 283-0547

8. U.S. Department of Labor/OSHA
Cesar Chavez Memorial Building
1244 Speer Blvd., Suite 551
Denver, CO 80204
Phone: (720) 264-6550
Fax: (720) 264-6585

9. U.S. Department of Labor/OSHA
San Francisco Federal Building
90 7th Street, Suite 18100
San Francisco, CA 94103
Phone: (415) 625-2547
Fax: (415) 625-2534

10. U.S. Department of Labor/OSHA
300 Fifth Street, Suite 1280
Seattle, WA 98104-3212
Phone: (206) 757-6700
Fax: (206) 757-6705