

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: June 20, 2003

TO : Alan Reichard, Regional Director
Veronica I. Clements, Regional Attorney
Michael Leong, Assistant to Regional Director
Region 32

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Raley's
Case 32-CA-20490-1

This case was submitted for advice as to whether the Region can issue a limited complaint alleging that the Employer violated the Kroger¹ clause in its collective bargaining agreement by refusing to verify the Union's claim of majority status and instead seeking an election. We conclude that the Region can issue such a complaint and need not also allege an unlawful refusal to recognize the Union as the majority representative.

The Employer and the United Food and Commercial Workers Local 1179 (the Union) have a current collective bargaining agreement that contains a standard Kroger clause. On March 31, 2003, the Union advised the Employer that a majority of employees at its San Pablo store had authorized the Union to serve as their bargaining representative, and asked the Employer to grant it recognition pursuant to the Kroger clause. The Union offered to submit to a card check, and suggested that it be conducted by the State Mediation and Conciliation Services or by some other neutral entity acceptable to both parties. The Employer rejected the Union's request and filed an RM petition.

The Union's charge alleges only that the Employer violated the Act by refusing to submit to a verification of the Union's majority status; it does not allege an unlawful refusal to recognize. Since there is a dispute as to the number of employees in the unit, and there are deficiencies in some of the authorization cards, the Region has not made a determination as to whether the Union has the support of a majority of the San Pablo store employees.

¹ Kroger Co., 219 NLRB 388 (1975).

The Board has held that Kroger clauses waive an employer's right to an NLRB election and constitute an agreement that the employer will recognize the union upon its submission of evidence of majority status. Therefore, even in the absence of a Board determination of majority status, the Employer has violated Section 8(a)(5) by insisting on an election in the face of the Union's demand for recognition based on an offer of a majority showing. In view of the limited nature of the Union's charge, the Region may issue complaint on this narrow theory of violation, without alleging a refusal to recognize the Union as the majority representative.²

[FOIA Exemptions 2 and 5

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² The Region initially determined that Collyer deferral was appropriate as to the alleged "failure to verify" violation. In response to the Region's a Collyer letter, the Employer has declined to handle this issue through the grievance/arbitration process.

³ [FOIA Exemptions 2 and 5].