

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

Advice Memorandum

DATE: May 29, 2009

TO : James J. McDermott, Regional Director
Region 31

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

SUBJECT: Kaiser Permanente Hospital
Case 31-CA-29106
SEIU, United Healthcare Workers - West
Cases 31-CB-12516, 12589

These Section 8(a)(1) and (3) and 8(b)(1)(A) cases were submitted to Advice for review in light of the current dispute between the SEIU/United Healthcare Workers West (SEIU or Union) and the National Union of Healthcare Workers (NUHW).

The charging party alleges that the Employer and Union violated the Act by removing him from his Union positions as Contract Specialist (an appointed position) and Shop Steward (an elected position) because he had gathered signatures on a petition to decertify the Union and elect NUHW as the employees' new union.

The Region is prepared to dismiss the Section 8(a)(1) and (3) charge because the Union, not the Employer, made the decision to remove the charging party from these positions. The Region is prepared to dismiss the Section 8(b)(1)(A) charge because the Union's actions did not impact upon the charging party's employment relationship with the Employer¹ and, to the extent there was any impact on the employment relationship, the Section 7 right to organize for a rival union was outweighed by the Union's right to have its agents act with undivided loyalty.²

¹ See Office Employees Local 251 (Sandia National Laboratories), 331 NLRB 1417 (2000) (regardless of whether a union member is appointed or elected to a union position, union discipline of that official is unlawful only if it impacts his relationship with the employer, impairs access to Board processes, pertains to unacceptable methods of union coercion, or otherwise impairs policies imbedded in the Act).

² See Service Employees Local 254 (Brandeis University), 332 NLRB 1118, 1121-1122 (2000) (assuming, arguendo, that dissident member's removal from elected steward and

The Region may proceed with its determination to dismiss the charges, absent withdrawal.

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committeeman positions impacted his employment relationship, the Section 7 rights at stake were outweighed by the Union's legitimate interest in ensuring the undivided loyalty of its representatives).