

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

Advice Memorandum

DATE: July 9, 2009

TO : Alan Reichard, Regional Director
Region 32

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

SUBJECT: Evergreen New Hope Healthcare
SEIU-United Healthcare Workers-West
Cases 32-CA-24482; 32-CB-6666

These cases were submitted for review in light of the current dispute between the SEIU-UHW-W (SEIU) and the National Union of Healthcare Workers (NUHW).

The charges, filed by NUHW, allege that the Employer violated Sections 8(a)(1), (2), and (3) of the Act by issuing a disciplinary notice to an employee because of her support for NUHW and by allowing an SEIU representative into the facility; and that SEIU violated Sections 8(b)(1)(a) and 8(b)(2) of the Act by threatening to have the Employer discipline her, causing the Employer to discipline her, and locking her out of a bargaining session because she supported NUHW.

We agree with the Region that the charges should be dismissed, absent withdrawal. With respect to the 8(a)(1), (2), and (3) allegations, the investigation disclosed no evidence of animus. Rather, the Employer disciplined the employee because she attempted to force the SEIU representative, who was lawfully permitted entry onto the property by the Employer, to leave the facility by engaging in repeated acts of disruptive behavior, including the use of foul language. Further, the fact that the Employer allowed the SEIU representative into the facility did not constitute unlawful assistance or domination.

With respect to the Section 8(b)(1)(a) and 8(b)(2) allegations, the evidence was insufficient to establish that the SEIU representative caused the Employer to discipline the employee. The Employer denied that the Union ever made such a request and, as discussed above, the evidence demonstrates that the Employer actually disciplined the employee because she had engaged in

unprotected, disruptive behavior. With respect to the SEIU representative's alleged threat to have the Employer discipline the employee, we note that the employee's statement currently stands unrebutted despite SEIU's stated intention to submit evidence refuting that allegation. Notwithstanding the arguable threat, we agree with the Region that it would be appropriate to issue a merit dismissal, given the isolated nature of the charge and the fact that the SEIU representative never followed through on the alleged threat.

Further, SEIU's refusal to allow the employee to participate in a bargaining session was not unlawful because the employee repeatedly advised SEIU officials of her disloyalty and told them that SEIU was not the employees' legitimate bargaining representative.¹

/s/
B.J.K.

¹ See Service Employees Local 254 (Brandeis University), 332 NLRB 1118, 1121-1122 (2000) (assuming, arguendo, that dissident's removal from elected steward and committeeman positions impacted his employment relationship, the union's legitimate interest in ensuring the undivided loyalty of its representatives outweighed the Section 7 rights at stake).