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

Advice Memorandum

DATE: July 17, 2009

TO : Alan Reichard, Regional Director
Region 32

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

SUBJECT: SEIU-United Healthcare Workers-West
(Foresight Management Services, Inc.)
Case 32-CB-6656

This case was submitted for review in light of the current dispute between the SEIU-UHW-W (SEIU) and the National Union of Healthcare Workers (NUHW).

The charge, filed by NUHW, alleges that the SEIU violated Section 8(b)(1)(A) by its conduct surrounding the negotiation and ratification of a successor collective bargaining agreement with the Employer.

We agree with the Region that the charge should be dismissed, absent withdrawal. The Charging Party alleges that the SEIU unlawfully required employees seeking to participate in bargaining to sign a loyalty oath to the Union. However, a bargaining representative can lawfully require undivided loyalty from its employee-representatives, because they represent the Union and its interests within bargaining.[1]

The Charging Party's further allegations surrounding the handling of the contract ratification vote address internal Union matters that do not invoke unfair labor practices. Procedures relating to the adoption, ratification, or acceptance of collective-bargaining agreements have long been recognized as "matter[s] … exclusively within the internal domain of the Union."[2]

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[1] See, e.g., Service Employees Local 254 (Brandeis University), 332 NLRB 1118, 1122 (2000) (removal of employee from position as union steward not unlawful; union has "legitimate interest in speaking with one voice, through trusted representatives, in dealing with the Employer about the bargaining unit employees' terms and conditions of employment.")

[2] Houchens Market of Elizabethtown, Inc. v. NLRB, 375 F.2d 208, 212 (6th Cir. 1967).

Thus, if a union chooses to seek employee ratification, it is for the union to construe and apply its internal regulations relating to the procedures it will utilize.[3]

Even aside from these general considerations, the evidence does not bear out the Charging Party's allegations. Although the Charging Party contends that the Union refused to reveal the content of the tentative agreement to unit employees prior to the ratification vote, the evidence indicates that the Union in fact distributed fact sheets to interested employees, including details surrounding wage raises. The evidence further establishes that employees were allowed to participate in the ratification election so long as they did so during pre-disclosed polling times. Finally, the Union and the Employer apparently agreed to combine previously separate bargaining units into a single overall unit. Thus, the Union did not violate the Act by telling employees in those previously separate units that a majority in the overall unit had voted to ratify the contract.

B.J.K.

[3] See, e.g., M & M Oldsmobile, 156 NLRB 903, 905 (1966), enfd. 377 F.2d 712 (2d Cir. 1967) (Board rejected employer's assertions regarding union ratification vote count; union's internal regulations relating to vote count not employer's concern).