

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

Advice Memorandum

DATE: August 7, 2009

TO : Alan Reichard, Regional Director
Region 32

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

SUBJECT: SEIU UHW-West
Case 32-CC-1575

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 SEIU, alleges that NUHW violated Sections 8(b)(4)(B) and 8(b)(4)(C) by threatening to strike and picket, where the object of the threatened picket is forcing or requiring an employer to recognize and bargain with NUHW even though NUHW has not been certified as the exclusive representative of the employer's employees; and forcing or requiring an employer to recognize and bargain with NUHW even though SEIU is the certified or recognized representative of the employer's employees.

The Region's investigation revealed that NUHW did not violate Section 8(b)(4)(B) because the threatened strike against the Employer was a primary strike and a violation of Section 8(b)(4)(B) requires that the pressured entity be neutral to the primary dispute between the union and the employer.¹ The Region's investigation further revealed that NUHW did not violate Section 8(b)(4)(C) by threatening to picket the Employer because there is no evidence that SEIU was ever certified as the representative of the current voluntarily recognized bargaining unit.²

¹ See Food and Commercial Workers Local 1776 (Carpenters Health Fund), 334 NLRB 507, 512 (2001), citing NLRB v. Denver Building & Construction Trades, 341 U.S. 675, 686 (1951) ("[i]ndeed, the proviso to Section 8(b)(4) states: 'that nothing in contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing'").

² Although a bargaining unit consisting only of techs was apparently certified in October 2000, the parties

Accordingly, the Region may dismiss this charge, absent withdrawal.

/s/
B.J.K.

subsequently agreed to add cooks and non-techs to the unit. See White-Westinghouse Corp., 229 NLRB 667, 672 (1977) (the merger of separately certified units, in effect, destroys the separate identity of the individual units).