

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

## Advice Memorandum

DATE: September 17, 2009

TO : Alan Reichard, Regional Director  
Region 32

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

SUBJECT: Palm Haven Care Center 518-4020-0133  
Case 32-CA-24576

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

The Charging Party contends that the Employer violated Section 8(a)(2) by assisting and providing material support to the NUHW to the detriment of the incumbent union, SEIU-UHW-W.

Briefly, the facts are as follows: The Employer operates a nursing home whose employees are represented by the SEIU-UHW-W. The former UHW-W shop stewards, Jessica Gutierrez and Cory Holman, now support NUHW.

On March 1, 2009, nonemployee UHW-W representative Sandra Barringer went to the facility and observed four separate bulletin boards in the employee break room, three that she perceived to be Employer-controlled and one that she viewed to be a UHW-W bulletin board. Pro-NUHW flyers were posted on both the UHW-W and the Employer's bulletin boards. Barringer removed the NUHW flyers from both bulletin boards. Later that day, Barringer claims that she was approached by Gutierrez, Holman and an individual that Barringer believed to be a supervisor named "Cheryl." Gutierrez and Holman chastised Barringer for removing the flyers; Cheryl agreed that Barringer should not have removed them. Barringer claims that Cheryl said that she had checked and received approval from an unidentified upper manager or attorney to allow NUHW flyers on Employer bulletin boards. Barringer warned Cheryl that she would likely be committing a ULP if she reposted the NUHW flyers. Gutierrez and Holman urged Cheryl to put the NUHW flyers back up, but Cheryl did not do so.

Barringer visited the facility on three more occasions between March and May and noticed NUHW flyers on the UHW-W bulletin board on all occasions and on Employer bulletin boards on some occasions. On one of these visits, alleged supervisor Cheryl told Barringer not to remove the flyers

from the Employer bulletin board. Barringer contends that Cheryl told her that the owner had said it was acceptable for NUHW to post flyers on Employer bulletin boards.

The Region's investigation revealed that the Employer has four bulletin boards adjacent to each other. There is no sign on the bulletin boards indicating which bulletin boards are for Employer announcements and which bulletin board is for UHW-W announcements. It appears, however, that the Employer generally posts its announcements on three of the boards and that the Employer permits the UHW-W to post announcements on the far left bulletin board. The Region's investigation did not uncover the existence of a supervisor named "Cheryl," nor a supervisor with a similar name.

We agree with the Region that the evidence is insufficient to establish a Section 8(a)(2) violation. Specifically, there is insufficient evidence that the individual that Barringer identified as "Cheryl" is a supervisor rather than an employee and that the Employer authorized NUHW to post announcements on an Employer bulletin board. According to Barringer, while Cheryl agreed with Gutierrez and Holman during the March incident, Cheryl did not repost the NUHW flyers after Barringer warned her that she might be committing a ULP. While Barringer saw NUHW postings on Employer bulletin boards in the following months, there is insufficient evidence that the Employer authorized or condoned these postings. During Barringer's second encounter with Cheryl, Cheryl told Barringer not to remove NUHW flyers, but provided no names or specific information indicating which upper manager in fact authorized NUHW postings on Employer bulletin boards. Moreover, there is no allegation that the Employer denied UHW-W the ability to post announcements on Employer bulletin boards, nor is there any allegation that the Employer otherwise supported or assisted NUHW to the detriment of UHW-W.

Given the dearth of evidence, the Region is authorized to dismiss the charge, absent withdrawal.

B.J.K.