

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

## Advice Memorandum

Date: November 12, 2009

TO : Alan Reichard, Regional Director  
Region 32

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

SUBJECT: SEIU-UHW-W  
(Kindred Hospital)  
Case 32-CB-6750

This case involving Section 8(b)(1)(A) allegations was submitted to the Division of Advice for review in light of the current dispute between SEIU-UHW-W (SEIU) and National Union of Healthcare Workers (NUHW).

The charge alleges that SEIU violated its duty of fair representation by failing and refusing to process grievances on behalf of Anita Cook, an NUHW supporter, for arbitrary, capricious, and/or other unlawful considerations. The investigation revealed that Cook, the former SEIU steward in the unit, became an NUHW supporter and was involved in the NUHW's mass takeover of UHW offices by NUHW supporters. Cook alleges that the SEIU failed to file and process grievances on her behalf based on her support for NUHW.

The investigation revealed that the SEIU filed several grievances on Cook's behalf and made efforts to process those grievances. While Cook alleges that the SEIU failed to process a pre-trusteeship, January 20, 2009 grievance alleging harassment, she admits that she had forgotten about the grievance, or to tell post-trusteeship UHW representatives about it. Cook also received a January 30, 2009 written warning and filed a charge with the Region. Due to a miscommunication regarding Collyer deferral with the Region, the SEIU did not file a charge until September 21, 2009. The SEIU is now, however, processing the grievance and had previously discussed the written warning with the Employer at a meeting concerning another Cook grievance. The evidence also revealed that the Union filed a grievance over Cook's one day suspension in February 2009, but was hampered in its ability to process the grievance based on Cook's refusal to meet the SEIU representative anywhere other than the UHW offices.<sup>1</sup> The Union also filed a grievance over Cook's three-day

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<sup>1</sup> Based on Cook's involvement in the takeover of the UHW offices, the Region has concluded that the SEIU's refusal to meet at SEIU offices was reasonable.

suspension in April 2009, requested information from Cook to assist in processing the grievance, communicated with the Employer about the grievance, spoke to Cook by telephone, and met with her about the grievance.

While the processing of some of the grievances may have been delayed because of changes in SEIU representatives and post-trusteeship confusion, the SEIU continues to process the grievances. Thus, we agree with the Region that there is no evidence that the Union's handling of Cook's grievances has been arbitrary or perfunctory, or motivated by animus against her due to her support for NUHW.

Accordingly, we agree with the Region that the instant charge should be dismissed, absent withdrawal.

B.J.K.