

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

Advice Memorandum

DATE: December 29, 2009

TO : James Small, Regional Director
Region 21

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

SUBJECT: USC University Hospital
Case 21-CA-39088

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).

An SEIU affiliate represents a unit of food service workers employed by a company called Sodexo at USC University Hospital.¹ Charging party SEIU contends that the USC University Hospital violated Section 8(a)(1) and (2) by providing unequal union access to Sodexo healthcare employees. SEIU contends that, in response to an SEIU inquiry, SEIU recently learned of a Hospital policy, which Sodexo also enforced, prohibiting off-duty employees from entering or re-entering the inside of the hospital for non-business related purposes.

The SEIU claims that, despite this policy, Sodexo permitted two NUHW supporters (an organizer and an off-duty employee) to talk with a unit employee in the serving area of the cafeteria for 15 to 20 minutes on October 29, 2009. On the other hand, on two occasions in October 2009, Sodexo management told non-employee SEIU representatives not to meet with employees while they were working. The SEIU claims that, while the NUHW supporters were talking to the server, a supervisor named "Hermilio" walked by and greeted them. Sodexo denies the existence of a supervisor with that name. The SEIU claims that the NUHW supporters talked to another employee during his work hours for about five minutes later that day. This time, a supervisor did not appear to see them.

¹ Sodexo is an Employer of the food service workers. The Region has not made a determination as to whether the Hospital is also an Employer of the food service workers.

We agree with the Region that the charge, absent withdrawal, should be dismissed. There is no evidence that the Hospital disparately enforced any policies, either against soliciting employees while they are on working time or against permitting off-duty employees to re-enter the facility for non-business purposes.² Further, even if a Sodexo supervisor were an agent of the Hospital, there is insufficient evidence that a supervisor named Hermilio exists. Finally, we note that non-employee SEIU representatives, like non-employee NUHW representatives, are permitted to talk to employees in the cafeteria during nonworking time. There is insufficient evidence that the Hospital favored one union over the other in enforcing any policy.

/s/

B.J.K.

² The SEIU has also filed a charge alleging that the Hospital's access policy was unlawful, which the Region will submit to Advice separately.