

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

DATE: April 16, 2013

TO: Terry A. Morgan, Regional Director  
Region 7

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

SUBJECT: National Union of Healthcare Workers  
(Mercy Health Partners – Hackley Campus)  
Case 7-CB-090445

554-1475-1037

The Region submitted this case for advice as to whether the National Union of Healthcare Workers (NUHW) violated Section 8(b)(3) by refusing to provide the Employer with the servicing agreement NUHW entered into with International Association of Machinists and Aerospace Workers, District Lodge 60 (IAM) designating IAM as NUHW's agent for purposes of negotiating and servicing a collective-bargaining agreement. We conclude, in agreement with the Region, that NUHW did not violate Section 8(b)(3) because the Employer did not have an "objective, factual basis" for believing that NUHW had improperly delegated its representational responsibilities to IAM and that the servicing agreement would be relevant in determining the union to which it had a collective-bargaining obligation.<sup>1</sup> Therefore, absent withdrawal, the charge should be dismissed.

Numerous factors establish that the Employer lacked an objective, factual basis for believing that the servicing agreement would be relevant in determining whether NUHW or IAM was the Section 9(a) representative. In its letter advising the Employer that it had entered into the servicing agreement, NUHW stated that although IAM would be providing collective bargaining and representational services to the unit, the unit employees would remain members of NUHW. In a subsequent email, NUHW reminded the Employer that it continued to represent the unit employees, that IAM was servicing the unit, and that labor relations issues should be communicated to NUHW's chief shop steward. Moreover, NUHW's Newsletter, on which the Employer relies, specifically states that IAM's role in servicing the unit will be restricted to the duration of the contract it negotiates; that NUHW will "remain at

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<sup>1</sup> See *Service Employees Local 715 (Stanford Hospital)*, 355 NLRB No. 65, slip op. at 4 (2010) ("[W]hen an employer requests information pertaining to an outside union, it must have an objective, factual basis for believing that such information would be relevant in determining the union to which it has a collective-bargaining obligation.").

all times the legal collective bargaining representative of the employees”; and that NUHW will “hold and remain responsible for” all representational responsibilities, “including the duty of fair representation.” We also note that neither union’s communications or actions indicated that NUHW would be held harmless for IAM’s conduct in servicing the unit;<sup>2</sup> indicated that NUHW was acting at the direction of IAM or that employees’ dues would be increased to conform to IAM’s dues schedule and remitted to IAM directly;<sup>3</sup> or were otherwise inconsistent with the existence of a principal/agent relationship.<sup>4</sup>

We accordingly conclude, in agreement with the Region, that NUHW did not violate Section 8(b)(3) by refusing to provide a copy of the NUHW-IAM servicing agreement to the Employer.

/s/  
B.J.K.

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<sup>2</sup> *Cf. Goad Co.*, 333 NLRB 677, 679-80 (2001) (agreement between Section 9(a) representative and its purported agent “stands the law of agency on its head” by absolving the principal for the actions of its own agent, and confirmed that the principal was “bowing out” of its representational duties).

<sup>3</sup> *Cf. Sherwood Ford, Inc.*, 188 NLRB 131, 134 (1971) (finding that the contractually-recognized bargaining representative improperly delegated its Section 9(a) responsibilities when it designated another union as the unit employees’ bargaining representative, provided that the other union would receive dues according to its own schedule in exchange for providing services, and agreed to carry out all instructions it received from the other union).

<sup>4</sup> *Cf. Stanford Hospital*, 355 NLRB No. 65, slip op. at 4-5 (ordering the respondent union to furnish information that was relevant to determining which union was the Section 9(a) representative, after employer received conflicting information from various unions as to whether the original representative continued to exist).