

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM 80-31

June 24, 1980

TO: All Regional Directors, Officers-In-Charge
and Resident Officers

FROM: William A. Lubbers, General Counsel

SUBJECT: Proposed Memorandum of Understanding with EEOC

Recently, I contacted the General Counsel of EEOC and proposed a Memorandum of Understanding under which certain unfair labor practice charges filed with the General Counsel, which may also constitute a violation of Section 704(a) of Title VII of the Civil Rights Act of 1964, would have been deferred until EEOC has had an opportunity to resolve the charge.

For the reasons expressed in the attached letter from Francesta E. Farmer, Director, Office of Interagency Coordination, EEOC, that Agency has concluded that it would prefer not to enter into such a formal agreement.

This means that cases which present issues cognizable under both the N.L.R.A. and Section 704(a) of Title VII of the Civil Rights Act of 1964 need not be deferred to the EEOC. However, the Regions should continue to consider the deferral issue in all cases in which there is a case before EEOC which presents issues that overlap the NLRA issue presented to us. 1/

As Ms. Farmer notes, the EEOC is most willing to cooperate with us should we have questions concerning the interpretation of provisions of Title VII, the Equal Pay Act, or the Age Discrimination in Employment Act.

W A L
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Attachment

Distribution:

Regional - Special
Washington - Special

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1/ If the Region believes that deferral is warranted in a particular case, that case should be submitted to Advice. G.C. Memorandum 80-18 is accordingly hereby modified to provide that submission to Advice of cases of overlapping jurisdiction with EEOC is discretionary rather than mandatory, i.e. a case should be submitted only if the Region, in its discretion, wishes to defer. If there is no case before the EEOC, the charging party should be advised of the availability of the services of EEOC.



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

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National Labor Relations Board
Office of General Counsel

MAY 7 1980

Honorable William A. Lubbers, Esq.
General Counsel
National Labor Relations Board
Washington, D. C. 20570

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Dear Mr. Lubbers:

Your letter to EEOC General Counsel, Leroy D. Clark, of January 7, 1980, has been forwarded to me for reply. In your letter, you propose a Memorandum of Understanding between EEOC and the NLRB under which the Board would delay the processing of some retaliation charges, which state claims both under Section 704(a) of Title VII of the Civil Rights Act of 1964 and Sections 7 and 8(a)(1) of the National Labor Relations Act, until EEOC has had an opportunity to resolve the charge.

EEOC's Staff Committee on Interagency Policy (SCIP), which is comprised of representatives from each Commissioner's office, has met three times since receipt of your letter to consider your proposal and alternative EEOC staff proposals for an appropriate agreement. After extensive discussion, SCIP has concluded that a formal agreement is not in the best interest of charging party-complainants or of this Commission.

The most telling consideration that led to this decision was a comparison of the enforcement mechanisms available to EEOC and the Board. SCIP participants believed that the Board's cease and desist authority offered complainants a better opportunity for resolution of charges than EEOC's processes which require suit where conciliation is ineffective. They also felt that the Board's and EEOC's authorities over similar complaints vindicate different Congressional policies and purposes, and that the processing of charges arising from the same incident by both agencies should not lead to inconsistent results. See, Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974).

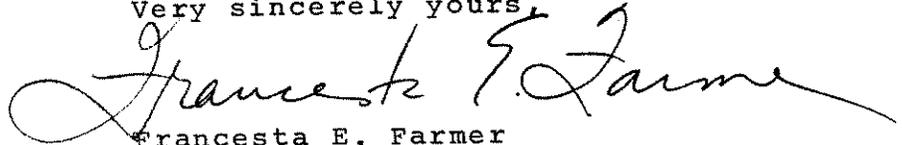
SCIP's decision not to recommend entry by EEOC into a Memorandum of Understanding should not be taken as disinterest in cooperation with the Board. EEOC will

certainly be happy to provide the Board any assistance it may desire where questions arise concerning the interpretation of provisions of Title VII, the Equal Pay Act or the Age Discrimination in Employment Act. Where the Board desires EEOC to process a given charge, EEOC stands prepared to do so.

We do request that, where complaints filed with the Board state claims under the NLRA and statutes that EEOC administers or only under EEOC administered statutes, that NLRB complaint intake personnel advise complainants that they may pursue their claims with the EEOC.

Thank you for the interest shown by you and your staff during our discussions concerning your proposal.

Very sincerely yours,



Francesta E. Farmer
Director
Office of Interagency
Coordination

cc: Harold J. Datz, Esq.
Assistant General Counsel
Division of Advice
National Labor Relations Board
Washington, D. C. 20570