

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 81-39

July 17, 1981

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

FROM: William A. Lubbers, General Counsel

SUBJECT: Deferral of Charges under Dubo Manufacturing
Company, 142 NLRB 431

General Counsel Memorandum 79-36 sets forth the general guidelines for the deferral of cases under Dubo Manufacturing. That memorandum expressly left open the issue of whether deferral is appropriate where the aggrieved individual has chosen not to pursue the grievance, but the union continues to process it. This memorandum resolves that issue. The Region should defer such cases assuming that the other requirements for deferral, as set forth in GC Memorandum 79-36, are met. 1/ In this regard, I note that one of the conditions of deferral is that "there is a reasonable chance that use of [the grievance-arbitration] machinery will resolve the dispute or set it at rest." 2/ Assuming that this is the case, there is no cogent reason to deny deferral, even if the grievance is being pursued by the union and not by the aggrieved individual. If the union prevails in the grievance-arbitration proceedings, it may well be that the charges will be withdrawn or they will be subject to dismissal on "non-effectuation" grounds.

Further, such deferral will not operate to the prejudice of the aggrieved individual. If the union drops the grievance, the Region would resume processing the case. If the union pursues the matter to arbitration and loses, the Region would not defer to the arbitral decision inasmuch as the aggrieved individual had withdrawn from the grievance-arbitration procedure. 3/ Accordingly, the Region would resume processing of the case. 4/

1/ This would be true irrespective of whether the Charging Party is the aggrieved individual or the union.

2/ G.C. Memorandum 79-36, at p. 1.

3/ Spielberg Manufacturing Co., 112 NLRB 1080, 1082, citing Monsanto Chemical. 97 NLRB 517 I and Wertheimer department Stores, 107 NLRB 1434. See also, Hershey Chocolate Co., 29 NLRB 1052. Cf. International Harvester, 138 NLRB 9023. In that case, the union filed a grievance against the employer, and resorted to arbitration, to enforce a union-security claim involving an employee. The employee filed a charge concerning this effort to enforce union security, and complaint issued thereon. The union prevailed in arbitration. The Board deferred to this decision, and dismissed the complaint, even though the Charging Party did not participate in the grievance-arbitration process. In this regard, the Board noted that his interests were "vigorously defended" by the employer. It should also be noted that the grievance-arbitration proceedings did not involve a grievance of the employee, i.e., he was not the aggrieved individual.

4/ Although the Region would not defer to the arbitral decision, the

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In sum, deferral of the case may lead to a resolution of the underlying dispute or set it at rest. And, deferral will not operate to the prejudice of the aggrieved individual. Accordingly such deferral would be warranted.

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4/ Regional Director, in making a merit determination, may wish to consider the evidence adduced in arbitration, or may wish to investigate relevant matters raised in the arbitration proceeding.