

OFFICE OF THE GENERAL COUNSEL
Division of Operations Management

June 24, 1975

MEMORANDUM 75-29

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

FROM: Joseph E. DeSio, Associate General Counsel

SUBJECT: Memorandum of Understanding with the
Department of Labor Concerning
Cases Arising Under Section 11(c)
of the OSH Act

In Memorandum 73-85, the Regions were advised of procedures to be followed in cases where alleged unfair labor practices may also constitute a violation of Section 11(c) of the Occupational Safety and Health Act, (OSH Act). Section 11(c) of that Act provides:

(1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. . . . In any such action the United States district courts shall have jurisdiction, for cause shown, to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with backpay.

As noted in Memorandum 73-85, the Regions were to obtain clearance from their Assistant General Counsels for issuance of complaint in such cases. The purpose of the clearance was to give the Agency an opportunity to coordinate any action by us with the Department of Labor, the agency charged with enforcement of the OSH Act. Since the issuance of Memorandum 73-85, we have been in contact with

the Department of Labor on a number of the cases and as a result of the efforts of both agencies at coordination, we have developed a Memorandum of Understanding for processing of future cases. A copy of this Memorandum is attached. Section B of the Memorandum of Understanding sets forth the procedure to be followed in cases which involve Section 11(c) issues.

The procedures set forth in paragraphs B-1, 2, and 3 are self-explanatory and should be implemented by the Regions upon receipt of this memorandum. Any proposed dismissal or deferral action by the Regional Director should be discussed with your Assistant General Counsel. Copies of letters notifying parties of their rights to file complaints under Section 11(c) should be sent to your Assistant General Counsel. Similarly, Washington should be advised of matters covered under Paragraph B-4. The Coordination and consultation contemplated by paragraph B-4 will be handled by Washington.

Any questions concerning the implementation of this memorandum should be directed to your Assistant General Counsel. The Memorandum of Understanding is being released publicly.


J. E. D.

Attachment

Distribution:

Washington - Special
Regional - Special

MEMORANDUM 75-29

MEMORANDUM OF UNDERSTANDING BETWEEN OCCUPATIONAL SAFETY
AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, AND
THE GENERAL COUNSEL, NATIONAL LABOR RELATIONS BOARD

The Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and the General Counsel, National Labor Relations Board (General Counsel) enter into this agreement in order to establish a procedure for coordinating 11(c) litigation under the Occupational Safety and Health Act (OSH Act) and litigation under Section 8 of the National Labor Relations Act (NLRA) which will (1) obviate duplicate litigation and (2) insure that employee rights in the area of safety and health will be protected.

A. BACKGROUND

1. Section 7 of the NLRA in relevant part provides that "Employees shall have the right to . . . engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection" Section 8 of the NLRA prohibits unfair labor practices which restrain or coerce employees in the exercise of the rights guaranteed in Section 7. Unfair labor practice proceedings are held before Administrative Law Judges. The Judges' Decisions are appealable to the Board and thereafter may be reviewed by Circuit Courts of Appeal.

2. Section 11(c)(1) of the OSH Act provides that "no person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." Jurisdiction for

enforcement of alleged 11(c) violations rests with the United States District Courts, whose decisions are reviewable by the Circuit Courts of Appeal.

3. Although there may be some safety and health activities which may be protected solely under the OSH Act, it appears that many employee safety activities may be protected under both Acts. However, since an employee's right to engage in safety and health activity is specifically protected by the OSH Act and is only generally included in the broader right to engage in concerted activities under the NLRA, it is appropriate that enforcement actions to protect such safety and health activities should primarily be taken under the OSH Act rather than the NLRA.

B. PROCEDURAL AGREEMENT

1. Where a charge involving issues covered by Section 11(c) of the OSH Act has been filed with the General Counsel and a complaint has also been filed with OSHA as to the same factual matters, the General Counsel will, absent withdrawal of the matter, defer or dismiss the charge. The General Counsel will inform the charging party of its action and will send a copy of such letter to OSHA.

2. Where a charge involving issues covered by Section 11(c) of the OSH Act has been filed with the General Counsel, but no complaint has been filed with OSHA, the General Counsel will notify the employee of his right to file a complaint under Section 11(c), which right should be exercised within 30 days. If the employee notifies the General Counsel of the filing of an OSHA complaint, or if the General Counsel is so informed by OSHA pursuant to consultations at the end of the 30-day period, then the General Counsel will proceed in accordance with paragraph B-1 above.

3. The General Counsel will process under the NLRA those charges involving issues covered by Section 11(c) of the OSH Act where, after notice pursuant to paragraph B-2 above, the charging party has not filed or, having filed, has withdrawn a complaint with OSHA.

4. Where a charge has been filed with the General Counsel which includes both issues covered by Section 11(c) of the OSH Act and matters within the exclusive jurisdiction of the General Counsel, the General Counsel and the Office of the Solicitor of Labor will consult in order to determine the appropriate handling of the matter.

5. The parties to this agreement will engage in periodic consultations in order to review its implementation.

/s/ Peter G. Nash
Peter G. Nash
General Counsel
National Labor Relations Board

/s/ William J. Kilberg
William J. Kilberg
Solicitor
Department of Labor