OFFICE OF THE GENERAL COUNSEL
Division of Operations Management

MEMORANDUM 79-4 January 17, 1979

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 OSHA Act

As you know, in GC Memorandum 75-29 we announced that a Memorandum of Understanding had been entered into between the General Counsel and the Department of Labor concerning the procedures to be followed when an unfair labor practice charge is filed with the General Counsel which may also constitute a violation of Section 11(c) of the Occupational Safety and Health Act.

Recently, questions have arisen as to whether the Memorandum of Understanding applies only to cases involving access to OSHA or whether it would also apply to situations such as a concerted refusal to work in protest of unsafe working conditions. To clarify any ambiguity that may exist, please note that the Memorandum of Understanding was designed solely to deal with questions arising under Section 11(c) involving discrimination in retaliation for such conduct as an employee's filing OSHA complaints or testifying in OSHA proceedings. Accordingly, the Memorandum of Understanding is to be followed only in such cases.

In all other safety and health related cases, Regions are to follow their normal casehandling procedures, including submission to the Division of Advice where the case presents novel legal issues. In those non-access type cases where merit is found and where there appears to be a real prospect that this Agency and the Department of Labor would engage in duplicate proceedings, the Regions should submit the case to the Division of Operations Management for coordination with the Department of Labor.

J. E. D.

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