

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 84-14

July 13, 1984

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

FROM: Wilford W. Johansen, Acting General Counsel

SUBJECT: Deferral Policy in Cases Where Only
Some Allegations are Deferrable

In GC Memorandum 84-5, concerning United Technologies Corp.,
268 NLRB No. 83, we stated:

Accordingly, except for the fact that these
(deferral) principles will now be applied not
only in Section 8(a)(5)-8(b)(3) cases but in
other cases as well, the Regions should continue
to apply deferral principles as they stood prior
to United Technologies.

One of these pre-existing principles pertains to the situation
where certain allegations in a case are deferrable and related
allegations are not. In GC Memorandum 77-58, we said that, in such
situations, none of the allegations should be deferred. 1/
That is, it would not be appropriate to defer the nondeferrable
allegations; nor would it be sensible to litigate two related allegations
before two different tribunals. In a recent decision of the Board,
this principle was reaffirmed. 2/ Accordingly, the Regions should
continue to apply it.

As set forth in GC Memorandum 79-36, this same principle
applies to Dubo-type 3/ cases. Thus, if certain allegations are
deferrable under Dubo (i.e. they are the subject of a pending
grievance) and related allegations are not deferrable (either under
Dubo or United Technologies), none of the allegations should be deferred. 4/

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- 1/ See p. 3 of GC Memo 77-58, and cases cited therein.
2/ S. Q.I. Roofing, Inc., 271 NLRB No. 3, n. 3.
3/ 142 NLRB 431.
4/ See n. 12 of GC Memorandum 79-36.

Finally, under both United Technologies and Dubo, if the deferrable allegations are not related to the nondeferrable allegations, the Region should defer on the former and proceed on the latter. In order to avoid procedural problems under Jefferson Chemical 5/, the Region should announce, at the inception of the litigation of the nondeferrable allegations, that it is only litigating certain allegations of the case, that it is deferring certain unrelated allegations, and that it reserves the right to subsequently litigate the deferred allegations, should that become necessary. 6/

If the Region has questions regarding the memorandum or its application to a particular case, the Region should call Advice or submit the case to Advice.


W. J.

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5/ 200 NLRB 992.

6/ Of course, if the allegations are resolved in the grievance-arbitration process in a nonrepugnant manner, such subsequent litigation would not be necessary.