# MEMORANDUM OF UNDERSTANDING

**between**

**THE OFFICE OF GENERAL COUNSEL OF THE NATIONAL LABOR RELATIONS BOARD**

**and**

**UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES**

The parties to this MEMORANDUM OF UNDERSTANDING are the Office of General Counsel of the National Labor Relations Board ("NLRB") and the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"), U.S. Department of Justice.

## I. BACKGROUND

1. The NLRB is an independent agency of the United States government that enforces the National Labor Relations Act, 29 U.S.C. § 151 ("NLRA"), which guarantees the right of certain private sector employees to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection; and to refrain from any of these activities. The NLRA prohibits employers and labor organizations from interfering with these rights, or discriminating against employees because they have exercised these rights. The NLRB is responsible for investigating and remedying any alleged violation of these rights, and is also responsible for conducting elections to determine whether employees wish to be collectively represented.

2. OSC is charged with the enforcement of the anti-discrimination provision of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1324b, which prohibits (1) covered persons or entities that employ four or more employees from discriminating against work-authorized individuals on the basis of citizenship status in hiring, firing, or recruitment for a fee; (2) covered persons or entities that employ four to fourteen employees from discriminating against work-authorized individuals on the basis of national origin in hiring, firing, or recruitment for a fee; (3) covered persons or entities from engaging in unfair documentary practices in the employment eligibility verification (I-9 and E-Verify) process on the basis of citizenship status or national origin, and (4) covered persons or entities from retaliation for engaging in protected activity relating to the rights and privileges secured under 8 U.S.C. § 1324b.

3. The INA requires aggrieved parties to file charges within 180 days of the last alleged unlawful labor practice or act of discrimination.

## II. PURPOSE OF MEMORANDUM OF UNDERSTANDING

4. The purposes of this Memorandum of Understanding are to foster cooperation and minimize duplication of effort.

## III. PROVISION OF JURISDICTIONAL INFORMATION TO PUBLIC

5. When, during an intake interview or case processing, it becomes apparent to OSC or NLRB personnel that the alleged unlawful conduct may also fall within the jurisdiction of the other agency, the agency will advise the member of the public that an opportunity may exist to file a charge with the other agency. Agency personnel will further provide the member of the public with informational materials prepared by the other agency, which describes that agency's jurisdiction and contact information.

6. OSC considers the NLRB as its agent for the sole purpose of accepting charges that fall within OSC's jurisdiction in order to toll the statutory time limits for filing charges. The NLRB (with the complaining parties' consent) will forward to OSC a NLRB charge that implicates a possible violation of 8 U.S.C. § 1324b, in which case OSC will consider that an OSC charge was filed on the date that the NLRB received its charge.

7. Referrals to be made by the NLRB include categories of discrimination listed in Section I, Paragraph 2 of this document.

8. Referrals to be made by the OSC include categories of discrimination listed in Section I, Paragraph 1 of this document.

9. OSC and NLRB will provide training to staff of the other agency in identifying cases and issues that may arise under its jurisdiction.

10. Where appropriate, the agencies shall coordinate the parallel investigation of a charge referred under this document as set forth in Section IV.

## IV. COORDINATION OF INVESTIGATIONS

11. Where OSC and NLRB have retained jurisdiction over related charges, both agencies shall coordinate the course of their respective investigations and will share information and participate jointly in the investigation, to the extent permitted under applicable law and agency policy, so as to minimize duplication of effort. Investigators from each agency assigned to the charge may communicate directly on matters related to the charge.

12. An agency seeking information in the investigative case file of the other agency may request to inspect the material in the case file. The request must be signed or submitted (if via email) by the head of the requesting employee's immediate organizational unit. The request should identify the investigator or attorney, if known, and specify the case

files to be reviewed, or otherwise describe the information being sought. Where feasible, a review of the investigative case file shall take place prior to requesting copies. A request by the NLRB to review OSC investigative files should be sent to the Deputy Special Counsel. A request by OSC to review NLRB investigative files should be sent to the Associate General Counsel of the Division of Operations-Management, who shall coordinate with the Regional Director of the Region where the information is located. A request by OSC to inspect or receive documents in a NLRB investigative case file will be made pursuant to 29 C.F.R. Section 102.118. Should the requesting agency receive a demand from outside the agency for disclosure of any information provided by the other agency pursuant to this MOU, each agency agrees to assert any available privileges and use all appropriate FOIA exemptions to resist inappropriate disclosure. The agency receiving the information agrees to notify the agency providing the information before information supplied from the investigative case file is provided to any outside entity.

13. To the extent reasonably practicable, and at such times and places as might be mutually agreeable, each party to this Memorandum of Understanding will offer to the other such training and technical assistance to assist each party to better understand the policies, procedures, and law governing the enforcement activities of the other party.

14. The NLRB may obtain telephonic technical assistance and guidance from OSC by calling 1-202-616-5594 between the hours of 9:00 a.m. - 5:00 p.m. (ET), Monday-Friday (excluding holidays), or by submitting a written request by facsimile, (202) 616-5509, or by email addressed to OSCReferral@usdoj.gov. NLRB staff requests for telephonic assistance shall be directed to the investigator or attorney on duty.

15. OSC may obtain telephonic technical assistance and guidance from the NLRB by calling 1-202-273-2900 between the hours of 9:00 a.m. – 5:00 p.m. (ET), Monday – Friday (excluding holidays) and requesting to speak to the Assistant General Counsel or Deputy overseeing the Regional office where the dispute arises.

## V. NO DIMINUTION OF AGENCY AUTHORITY

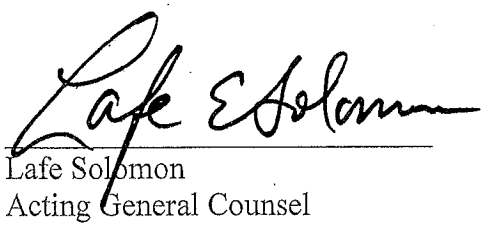
16. Nothing in this Memorandum of Understanding diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its enabling statute.

## VI. RIGHT OF MODIFICATION AND EFFECTIVE DATE

17. This Memorandum of Understanding may be modified in writing at any time by mutual consent of the NLRB and OSC. Should either party wish to discontinue participation in this Memorandum of Understanding, that party should endeavor to provide thirty (30) days advance written notice of its intent to representatives of the other agency.

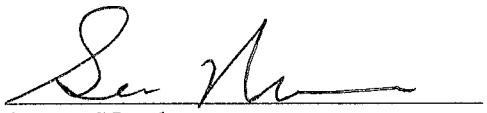
18. This Agreement shall be effective on the date it is fully executed by the parties.

Dated: July 8, 2013



Lafe Solomon
Acting General Counsel
National Labor Relations Board

Dated: July 8, 2013



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Related Unfair Employment Practices