

The Region has carefully considered the charge alleging that [name of Charged Party] violated the National Labor Relations Act. As explained below, I have decided that further proceedings on the charge should be handled in accordance with the deferral policy of the National Labor Relations Board as set forth in *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United Technologies Corp.*, 268 NLRB 557 (1984). This letter explains that deferral policy, the reasons for my decision to defer further processing of the charge, and the Charging Party's right to appeal my decision.

**Deferral Policy:** The Board's deferral policy provides that the Board will postpone making a final determination on a charge when a grievance involving the same issue can be processed under the grievance/arbitration provision of the applicable contract. This policy is partially based on the preference that the parties use their contractual grievance procedure to achieve a prompt, fair, and effective settlement of their disputes. Therefore, if an employer agrees to waive contractual time limits and process the related grievance through arbitration if necessary, the Board's Regional Office will defer the charge.

**Decision to Defer:** Based on our investigation, I am deferring further proceedings on the charge in this matter to the grievance/arbitration process for the following reasons:

1. The Employer and the Union have a collective-bargaining agreement currently in effect that provides for final and binding arbitration.
2. The [insert description of each issue being deferred] as alleged in the charge [is/are] encompassed by the terms of the collective-bargaining agreement.
3. The Employer is willing to process a grievance concerning the issues in the charge, and will arbitrate the grievance if necessary. The Employer has also agreed to waive any time limitations in order to ensure that the arbitrator addresses the merits of the dispute.
4. Since the issues in the charge appear to be covered by provisions of the collective-bargaining agreement, it is likely that the issues may be resolved through the grievance/arbitration procedure.

**Further Processing of the Charge:** As explained below, while the charge is deferred, the Regional office will monitor the processing of the grievance and, under certain circumstances, will resume processing of the charge.

*Charging Party's Obligation:* Under the Board's *Collyer* deferral policy, the Charging Party has an affirmative obligation to file a grievance, if a grievance has not already been filed. If the Charging Party fails either to promptly submit the grievance to the grievance/arbitration process or declines to have the grievance arbitrated if it is not resolved, I may dismiss the charge.

*Union/Employer Conduct:* If the Union or Employer fails to promptly process the grievance under the grievance/arbitration process; declines to arbitrate the grievance if it

is not resolved; or if a conflict develops between the interests of the Union and the Charging Party, I may revoke deferral and resume processing of the charge.

*Charged Party's Conduct:* If the Charged Party prevents or impedes resolution of the grievance, raises a defense that the grievance is untimely filed, or refuses to arbitrate the grievance, I will revoke deferral and resume processing of the charge.

*Monitoring the Dispute:* Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and if continued deferral is appropriate. However, at any time, a party may present evidence and request dismissal of the charge, continued deferral of the charge, or issuance of a complaint.

*Notice to Arbitrator Form:* If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form to ensure that the Region receives a copy of an arbitration award when the arbitrator sends the award to the parties.

*Review of Arbitrator's Award:* If the grievance is arbitrated, the Charging Party may ask the Board to review the arbitrator's award. The request must be in writing and addressed to me. Because the parties have explicitly authorized the arbitrator to decide the statutory issue in this case, the Board's deferral standards applicable in this case are those set forth in *Babcock & Wilcox Construction Co.*, 361 NLRB No. 132 (2014), which is available on our website, [www.nlr.gov](http://www.nlr.gov). Any request for review of an arbitrator's award should analyze (1) whether the parties explicitly authorized the arbitrator to decide the statutory issue; (2) whether the arbitrator was presented with and considered the statutory issue, or was prevented from doing so by the party opposing deferral; and (3) whether Board law reasonably permits the award. The party urging deferral has the burden to prove these standards are met.

*Review of Grievance Settlement:* If the grievance is settled, the Charging Party may ask the Board to review the grievance settlement. The Board's deferral standards applicable to any grievance settlement in this case are also set forth in *Babcock & Wilcox Construction Co.*, 361 NLRB No. 132 (2014). Any request for review of a grievance settlement should analyze (1) whether the parties intended to settle the unfair labor practice issue; (2) whether the parties addressed the statutory issue in the settlement; and (3) whether Board law reasonably permits the grievance settlement agreement. The party urging deferral has the burden to prove these standards are met. In assessing whether to defer to the settlement, I will also consider the factors identified by the Board in *Independent Stave Co.*, 287 NLRB 740, 743 (1987).

**Charging Party's Right to Appeal:** The Charging Party may appeal my decision to defer this charge by filing an appeal with the General Counsel of the National Labor Relations Board, through the Office of Appeals. An appeal may be filed by submitting the enclosed Appeal Form (form NLRB-4767), which is also available at [www.nlr.gov](http://www.nlr.gov). However, we encourage the Charging Party to submit a complete statement setting forth the facts and reasons why the decision to defer the charge is incorrect.

*Means of Filing:* An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal **MAY NOT** be filed by fax or email. To file an appeal electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

*Appeal Due Date and Time:* The appeal is due on **[date populates]**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than . **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

*Extension of Time to File Appeal:* The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before [date populates]**. The request may be filed electronically through the **E-File Documents** link on our website [www.nlr.gov](http://www.nlr.gov), by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after , **even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

*Confidentiality:* We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.