

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: June 12, 2015

TO: Mori Rubin, Regional Director
Region 31

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: National Union of Healthcare Workers (Kaiser
Foundation Hospitals, Inc.) 536-0150
Cases 31-CB-140496, 31-CB-141486, 31-CB- 536-2581-0140
141536, 31-CB-141759, 31-CB-141831 536-5025-8300

California Nurses Association/National Nurses
Organizing Committee (Kaiser Foundation
Hospitals, Inc.)
Cases 31-CB-139496, 31-CB-141491, 31-CB-
141537, 31-CB-141829, 31-CB-141830

Kaiser Foundation Hospitals d/b/a Kaiser
Permanente Los Angeles Medical Center
Cases 31-CA-139468, 31-CA-141534, 31-CA-
141757

The Region submitted these cases for advice as to whether NUHW and CNA violated Section 8(b)(1)(A) by their conduct, including (1) entering into an allegedly overbroad servicing agreement that ceded NUHW's Section 9(a) representational obligations to CNA and (2) making misleading statements leading up to and after the vote on the servicing agreement. Additionally, the cases were submitted as to whether the Employer violated Section 8(a)(2) by unlawfully assisting and effectively recognizing CNA as the bargaining unit representative. We conclude that the charges should be dismissed, absent withdrawal.

FACTS

In February 2010, the National Union of Healthcare Workers ("NUHW") became the certified representative of a unit of approximately 1,300 registered nurses at the Kaiser Foundation Hospitals, Inc. ("Kaiser" or "Employer") facility located at 4867

Sunset Blvd in Los Angeles, California.¹ To date, NUHW and the Employer have not reached a collective-bargaining agreement.

In November 2012, the Graphics Communications Conference for the International Brotherhood of Teamsters (“Teamsters”) filed a representation petition in Case 31-RC-093617, which has been blocked by multiple unfair labor practice charges, including charges filed by NUHW against the Employer.² In July 2014,³ the California Nurses Association/National Nurses United (“CNA”) intervened in the Teamsters’ petition based on a showing of interest. In August, United Nurses Associations of California/Union of Healthcare Professionals, NUHHCE, AFSCME (“UNAC”) also intervened.

NUHW holds vote to allow CNA to service the unit

In July and August, a group of NUHW stewards asked NUHW’s lead negotiator to solicit CNA to secure a contract for the unit and for NUHW to allow the unit to proceed to the NLRB election. As a result, the NUHW stewards decided to submit two questions to the NUHW members in the bargaining unit: (1) whether NUHW should unblock the election by filing a motion to proceed with the NLRB, and (2) whether NUHW should enter into a servicing agreement with CNA which would delegate some representational duties. The internal NUHW election was scheduled for August 28.

In late August, notices were posted around the facility and mailed to unit employees’ homes about the upcoming NUHW election. One flyer read:

**VOTE SET FOR AFN RNs
NUHW-AFN STEWARD COUNCIL RECOMMENDS A “YES” VOTE**

The vote will be over the following items, and the ballot choices will be YES or NO on all three items as a whole.

- 1) AFN RNs disaffiliate from NUHW and affiliate with the California Nurses Association; and

¹ The American Federation of Nurses (“AFN”) previously represented the RNs and, as a result, the parties refer to the unit as the “AFN unit.”

² The Teamsters eventually filed a disclaimer of interest in November 2014 and withdrew its outstanding unfair labor practice charges.

³ All dates hereafter are in 2014 unless otherwise noted.

- 2) In order to facilitate an NLRB vote which would allow AFN RNs the opportunity to become members of the CNA, NUHW will, within 24 hours of the vote, file a “motion to proceed” with the NLRB. (A “motion to proceed” makes it clear that NUHW’s Unfair Labor Practices [ULPs] should not delay an NLRB election); and
- 3) NUHW will offer to enter into a service agreement with the CNA in which CNA representatives would assume all responsibilities for representation and bargaining for AFN RNs. The service agreement will become effective immediately upon NUHW and CNA executing such agreement.

The flyer then listed the date, time and location to vote and stated that “[a]ll members who have paid dues in August 2014 are eligible to vote. Dues can be paid at the polling place during the vote.”

Another flyer was titled “NUHW (AFN) RN STEWARD COUNCIL VOTES OVERWHELMINGLY TO JOIN CNA: Final Vote Set for AFN RNs to Join CNA.” A question and answer section at the bottom of the flyer states:

Q: Does the vote on August 28th mean we will be represented by CNA?

A: No, Currently, the RNs at [the Employer] are legally represented by NUHW and this NUHW vote will authorize NUHW to delegate representational responsibilities to CNA during the transition period to an NLRB election. In the NLRB vote, RNs will have the opportunity to elect CNA as their official bargaining representative.

On August 28, NUHW held the vote at the Employer’s facility.⁴ NUHW states that that vote was an internal union meeting and that it restricted attendance to RNs who were members in good standing. A UNAC representative claims that approximately 200 of the 1,200 unit members voted. The ballot stated:

**NUHW
AFN CHAPTER OFFICIAL BALLOT**

The NUHW-AFN Steward Council is recommending that [RNs] vote “YES.”

⁴ The Employer originally objected to holding the vote at its facility and requested NUHW to relocate its activity but NUHW informed the Employer that it was following its past practice of using the Employer’s staff lounge for conducting votes on union matters including, inter alia, strikes and contract offers.

- (1) In order to facilitate the nurses' opportunity to express their preferences in representation, NUHW will file, within 24 hours, "a motion to proceed" to the NLRB. (A "motion to proceed" makes it clear that NUHW's unfair labor practice [ULP] charges should not delay an NLRB election.), and
- (2) NUHW will offer to enter into a service agreement with the CNA in which CNA representatives would be delegated responsibility for representation and bargaining for AFN RNs.

Yes No

NUHW determined that a majority of the voter-members voted "Yes." Consistent with those results, on August 29, NUHW and CNA signed a Representation Service Agreement ("servicing agreement") stating that NUHW was delegating responsibility to CNA for representing and bargaining for the NUHW-represented RN unit. Under the agreement, CNA agreed to assume responsibility as "NUHW's designee for the negotiation and administration of a collective[-]bargaining agreement" on behalf of the RN unit, to represent the unit in "workplace and grievance matters," and to make "all communications with the unit." CNA also agreed to "indemnify and hold NUHW harmless" for all claims related to its performance of these functions, and NUHW agreed to remit all dues from the unit to CNA. Lastly, the agreement would remain in effect until final NLRB certification or until both parties agreed to cancel the agreement, whichever came sooner.

The same day the agreement was signed, CNA posted notices at the hospital announcing the results of the vote. The notices stated that NUHW members had voted for NUHW to file a motion to proceed with the NLRB in order to remove obstacles to a prompt NLRB election, and that the members had also authorized NUHW to "delegate union representation and collective[-]bargaining responsibilities to CNA" in order to ensure effective representation for the unit until the results of the NLRB vote.

Additionally on August 29, NUHW sent a letter to the Employer stating that NUHW had entered into a servicing agreement with CNA under which CNA would provide representational services for the RN unit at the Employer's facility. NUHW's letter also stated that CNA is "fully authorized to transact any and all representational business" for the unit on behalf of NUHW.

The Employer requested more information from NUHW about the servicing agreement and vote, referring to it as a “disaffiliation” vote.⁵ NUHW responded by stating that the vote was an “internal union matter” and attached a copy of the ballot and the servicing agreement. NUHW also clarified that there was no vote to disaffiliate.

On September 11, the Employer notified NUHW that it would accept NUHW’s designation of CNA as NUHW’s servicing agent for the NUHW-represented employees but that the Employer still considered NUHW to be the bargaining representative for the unit. Therefore, the Employer stated, it would refuse to acquiesce to any other terms or arrangements between NUHW and CNA beyond the agreement’s designation of CNA as NUHW’s servicing agent.

The following week, the Employer notified the unit of NUHW’s recent vote. The Employer stated that it expected a representation election to be held within 60-90 days, in which unit employees would vote to: remain with NUHW; change their representative to CNA, UNAC, or the Teamsters; or have no union representation. The Employer also explained that NUHW had entered into a servicing agreement with CNA, under which CNA would assume representational responsibilities for the unit, including representing unit employees in grievances and arbitrations, acting as NUHW’s agent in meeting with management regarding operational changes, and acting/negotiating on behalf of NUHW at the bargaining table. Lastly, the Employer indicated that, to its knowledge, NUHW stewards remained unchanged and would continue to represent unit members.

The parties’ conduct after the servicing agreement was executed

Following the execution of the servicing agreement, NUHW stewards continued to submit grievances using NUHW grievance forms. A CNA representative helped the NUHW stewards to process post-service agreement grievances as well as grievances that had been filed before CNA became NUHW’s agent. Additionally, NUHW representatives were included in some of the communications between the Employer and CNA regarding lists of stewards and changes to benefit administrators.

Beginning in mid-September, the Employer began to deal with a CNA representative as NUHW’s agent for ongoing labor relations, including bargaining over staffing issues impacted by the opening of a new hospital tower. The parties

⁵ The Employer had originally requested information about a “disaffiliation vote” on August 26, but NUHW had only responded that it was holding a meeting to discuss various internal union matters that did not implicate issues of legitimate employer concern (such as NUHW’s status as the exclusive bargaining representative).

reached an agreement in December, and CNA's representative signed the agreement as the "NUHW-AFN Union Representative."

In October, while bargaining over staffing the new tower was ongoing, the Employer accused CNA of unlawfully attempting to assume the duties of a formally-selected bargaining representative and not merely engaging in activities as NUHW's servicing agent. Specifically, the Employer accused CNA of instructing nurses not to follow the status quo on assignments and duties and having nurses submit various forms and objections rather than follow the established grievance procedures. CNA responded that it was not engaging in any unlawful conduct, that the forms had been used at the Employer's facility before CNA became NUHW's agent, that the Employer could not provide specific examples of CNA performing duties outside the scope of the servicing agreement, and that it was continuing to bargain with the Employer over staffing issues.

Also in October, UNAC requested that the Employer permit its representatives to attend new employee orientations to speak with RNs about joining UNAC. The Employer denied the request, stating that UNAC did not represent the unit employees and that, because of the pending election, it would not be prudent for the Employer to grant UNAC's request. UNAC complained that CNA representatives were present at the orientations, provided new employees with CNA-branded gear, and had the employees fill out contact cards for CNA.⁶ Around the same time, UNAC filed a grievance with the Employer concerning staffing ratios and requested information. The Employer refused to process UNAC's grievance because it had "no standing" to file a grievance on behalf of the unit employees that it did not represent.

In January, CNA notified NUHW about a Department of Public Health investigation and asked NUHW to confirm that "assisting nurses with this investigation is within the scope of the duties delegated to CNA under the Servicing Agreement." A NUHW representative responded:

I am not sure why you are asking permission. CNA has taken over all responsibilities for the representation of the AFN RNs. In conformance with the Service Agreement, I have had nothing to do with the AFN unit since the Service Agreement was signed as determined by a vote of the AFN members.

⁶ Despite the Region's requests, UNAC did not provide direct evidence of this claim. Similarly, UNAC did not provide direct evidence in support of its additional assertion that a unit employee was approached by a CNA representative and was asked to join CNA and have her dues automatically deducted from her paycheck.

Similarly, the same NUHW representative noted in an email to the NUHW stewards at the Employer's facility that "CNA has been telling folks that NUHW is standing in the way of an election. The opposite is true. We let the RN's go to CNA 6 months ago. You have had CNA reps since then. We have not interfered."

On February 12, 2015, the Employer notified NUHW that it was withdrawing recognition. Since that date, the Employer has also not dealt with CNA under the terms of the servicing agreement at this facility. The NLRB election is currently blocked by the instant unfair labor practice charges.

ACTION

We conclude that NUHW and CNA did not violate Section 8(b)(1)(A) through their conduct surrounding the August 28 vote because the membership vote was an internal union matter that is not subject to the Board's scrutiny. We further conclude that NUHW and CNA did not violate Section 8(b)(1)(A) by entering into an overbroad servicing agreement because NUHW and CNA did not coerce employees within the meaning of the Act. Additionally, the Employer did not violate Section 8(a)(2) because it only recognized CNA as NUHW's servicing agent and not as the unit's exclusive bargaining representative.

NUHW and CNA's conduct surrounding the August 28 vote was not unlawful

The Board and courts have found many types of union decisions to be internal union matters that are not subject to scrutiny by the Board or an employer. This is because Congress incorporated a policy into the Act "against outside interference in union decisionmaking."⁷ Such cases typically involve matters of union governance that have no direct effect on the employment relationship.⁸ For example, in *Seattle-First*, the Supreme Court found that affiliation votes are purely internal union matters from which nonmembers can lawfully be excluded because a union's "affiliation does not directly involve the employment relation."⁹

⁷ *NLRB v. Financial Institution Employees of America Local 1182 (Seattle-First)*, 475 U.S. 192, 204 (1986) (internal citations omitted).

⁸ See e.g., *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 195 (1967) ("Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status.").

⁹ 475 U.S. at 203 n.10, 209 (internal citation omitted); see also *Longshoremen ILA Local 1575 (Navieras, NPR)*, 332 NLRB 1336, 1336 (2000) (finding that union did not violate its duty of fair representation based on the manner in which it conducted its

Similarly, we conclude here that the August 28 vote on allowing NUHW to file a motion to proceed and entering a servicing agreement was a purely internal union matter which NUHW lawfully limited to dues-paying members.¹⁰ Neither of those subject matters affects unit employees' terms and conditions of employment. The question of whether NUHW should file a motion to proceed with the NLRB election is merely a strategic legal decision regarding NUHW's posture in the representation case; the Board has never found such an issue to affect working conditions in a way that would preclude it from being a purely internal matter. As for the question of whether to enter a servicing agreement with CNA, the Board has long recognized that employees' selection of the agents of their collective-bargaining representative are "purely an internal union affair."¹¹ Thus, because the August 28 vote concerned purely internal union matters, NUHW lawfully limited the vote to dues-paying members.

Although one of the pre-vote flyers incorrectly described the vote as a vote to "disaffiliate from NUHW and affiliate with CNA," the rest of the flyers (and the ballot itself) indicated that there would be a subsequent NLRB election where unit employees would be able to select the representative of their choosing. Additionally, there is no evidence that NUHW threatened employees with any adverse consequences (much less *employment-related* consequences) for failing to pay dues. The flyers that mentioned dues all stated that there would still be an NLRB representation election.

contract ratification vote, because such procedures are purely internal union matters that do not fall "within the scope of Section 8(d)'s wages, hours, and other terms and conditions of employment") (citations omitted).

¹⁰ See *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143, 146-47 (2007) (due process challenges to internal union votes are no longer recognized by the Board), *enforced*, 550 F.3d 1183 (D.C. Cir. 2008). See also *Avante at Boca Raton, Inc.*, 334 NLRB 381, 381 (2001) ("nonmembers do not have a right to participate in internal union matters such as affiliation votes"), *review denied*, 54 F. App'x 502 (D.C. Cir. 2002); *Amoco Production Co.*, 239 NLRB 1195, 1197 (1979) (internal union matters are "of no concern to the employer or to nonmembers of the union") (Member Truesdale, concurring).

¹¹ See *Modern Drop Forge Co.*, 326 NLRB 1335, 1344-45 (1998) (citing *Howland Hook Marine Terminal Corp.*, 263 NLRB 453, 454 (1982)).

NUHW and CNA did not violate Section 8(b)(1)(A) by entering into the servicing agreement

It is well settled that unions may designate agents to represent employees on their behalf and that one labor organization may act as the agent of another, including for the purpose of conducting contract negotiations.¹² However, while a certified representative may delegate some of its duties to an agent under a contract, it may not delegate its Section 9(a) authority.¹³ Thus, the Board will find servicing agreements between unions invalid where they confer an outright substitution of Section 9(a) responsibilities, rather than a delegation of duties from principal to agent.¹⁴ There are two underlying reasons for this: from the standpoint of represented employees, only they have the statutory power to confer 9(a) status upon a chosen representative; from an employer's perspective, the Act does not impose an obligation to recognize and bargain with any representative other than the certified or lawfully recognized 9(a) representative of its employees. Cases involving servicing agreements' legitimacy typically arise in the refusal-to-bargain context, where the Board must assess whether an employer has a duty to bargain with the servicing agent.¹⁵

However, the Board has never held that a union violates Section 8(b)(1)(A) merely by entering into an overbroad servicing agreement that does not involve the employer's recognition of a minority union as the 9(a) representative. And in an

¹² See, e.g., *Goad Co.*, 333 NLRB 677, 679 (2001); *Rath Packing Co.*, 275 NLRB 255, 256 (1985); *Mine Workers Local 17 (Joshua Industries)*, 315 NLRB 1052, 1064 (1994) (finding that 9(a) representative-international union had designated local union as its agent for purposes of processing certain grievances), *enforced*, 85 F.3d 616 (4th Cir. 1996) (Table); *Kodiak Island Hospital*, 244 NLRB 929, 929-30 (1979) (finding that unions had agreed to establish a principal-agent relationship).

¹³ *Mine Workers Local 17*, 315 NLRB at 1063-64 (quoting *United Mine Workers (Garland Coal)*, 258 NLRB 56, 59 (1981), *enforced* 727 F.2d 954 (10th Cir. 1984)). See also *Reading Anthracite Co.*, 326 NLRB 1370, 1371 (1998) ("The International, as the certified representative and a signatory to the collective-bargaining agreement, could delegate the duties of contract administration, but it could not delegate the responsibility.").

¹⁴ *Sherwood Ford, Inc.*, 188 NLRB 131, 134 (1971); *Goad Co.*, 333 NLRB at 677 n.1.

¹⁵ See *Sherwood Ford, Inc.*, 188 NLRB at 133-34 (finding that employer did not violate Section 8(a)(5) by refusing to bargain with the servicing agent because the servicing agreement was invalid); *Goad Co.*, 333 NLRB at 677 n.1 (same).

8(b)(1)(A) case where there was no servicing agreement but the 9(a) representative otherwise attempted to transfer jurisdiction to another union, which would have resulted in an outright substitution of Section 9(a) responsibilities, the Board found no violation because there was no evidence of coercion.¹⁶ The transfer was tantamount to a disclaimer of interest in representing the employees, which unions are permitted to do, and the “receiving” union did nothing to coerce employees to accept its representation but rather disclaimed interest itself once it became clear that the employees did not desire representation.

Here, we conclude that the servicing agreement is overbroad and thus would be invalid. The agreement fails to reserve any collective-bargaining or representational duties for NUHW, contains an indemnification clause, requires that all dues from the unit be transmitted to CNA in exchange for its services, and can only be canceled with both parties’ consent.¹⁷ But, as stated above, an overbroad and invalid agreement, alone, does not violate Section 8(b)(1)(A).¹⁸

Furthermore, there is no evidence that NUHW or CNA coerced any unit employees with respect to the August 28 vote or coerced any employee in the unit to join CNA. At most, one of the pre-vote flyers stated that the vote was to disaffiliate from NUHW and affiliate with the CNA, but that language would not coerce employees into voting “Yes” or “No” in the internal union vote or to join CNA. In addition, all communications and flyers that discussed the vote indicated that there

¹⁶ See *Joint Council of Teamsters No. 42 (Grinnell Fire Protection Systems Co.)*, 235 NLRB 1168, 1169 (1978) (“We find no support . . . for the proposition that the attempt to substitute a new employee representative constitutes an unfair labor practice in the absence of coercive conduct aimed at compelling an employee to accept the new representative.”), *enforced sub nom. Dycus v. NLRB*, 615 F.2d 820, 826 (9th Cir. 1980).

¹⁷ See e.g., *Goad Co.*, 333 NLRB at 677 n.1, 679-80 (incumbent union “did not simply enlist the aid of an agent, but transferred its representational responsibilities to [the servicing union],” where, inter alia, the agreement contained an indemnification clause and permitted all dues and fees to be transferred to the servicing agent). See also *Arlen Beach Condominium Association*, Case 12-CA-24507, Advice Memorandum dated November 8, 2005 (overbroad servicing agreement found where incumbent union ceded all control, including the right to cancel the agreement without the agent’s consent).

¹⁸ The Employer still considered NUHW to be the bargaining representative and refused to acquiesce to any terms or arrangements between NUHW and CNA beyond the agreement’s designation of CNA as NUHW’s servicing agent.

would be an NLRB election to determine which union (if any) would be the unit's bargaining representative. And there is no evidence that any of the actions taken by CNA after the vote—e.g., negotiating the staffing agreement for the new hospital tower, helping NUHW stewards process grievances—restrained or coerced employees within the meaning of Section 8(b)(1)(A).¹⁹

Additionally, the fact that CNA intervened in the representation case and ultimately desires to represent the unit, and that NUHW may have entered the servicing agreement in order to give CNA an advantage in the upcoming Board election, does not make the servicing agreement coercive.²⁰ It is not uncommon for a servicing agent's ultimate goal to be representation of the unit.²¹ Absent some evidence of union restraint or coercion directed at the employees, CNA's conduct in accepting an overbroad servicing agreement was not unlawful.²² Thus, at a future date, should the unit employees vote in the representation election to select CNA as bargaining representative, "no policy of the Act would be offended by the fact that [CNA] gained support of employees from its service as agent of [NUHW]."²³

¹⁹ Nor is there any evidence that NUHW's actions after the vote violated Section 8(b)(1)(A). Although NUHW may have made false or misleading statements stating that it had "let the RNs go to CNA," employees were aware, through the Employer's letter, that the Employer was only treating CNA as NUHW's servicing agent and that there would be an NLRB election to decide the unit's exclusive bargaining representative. Further, NUHW stewards continued to be involved in day-to-day representation of the unit and NUHW representatives were included in some of the communications between the Employer and CNA regarding lists of stewards and changes to benefit administrators at the Employer's facility.

²⁰ *Grinnell*, 235 NLRB at 1169 (no coercion under 8(b)(1)(A) where union not "seeking to force representation on an unwilling unit").

²¹ See *Town Development, Inc. t/a Parkway Center Inn*, JD-16-12, 2012 WL 983244 (NLRB Div. of Judges Mar. 22, 2012) (finding that "the Act's policy in support of employee choice would only be vindicated, and vindicated in a manner consistent with the Act's concern for stability in bargaining relationships," were the servicing agent to win the Board election).

²² See *NLRB v. Drivers, etc., Teamsters Local 639 (Curtis Brothers, Inc.)*, 362 U.S. 274, 285-92 (1960) (peaceful picketing by a minority union to compel an employer to grant exclusive recognition does not violate Section 8(b)(1)(A) based upon restrictive Congressional legislative history to that section).

²³ *Town Development, Inc. t/a Parkway Center Inn*, JD-16-12, 2012 WL 983244.

CNA did not Demand Recognition and the Employer did not Confer Recognition

A minority union violates Section 8(b)(1)(A) and 8(b)(2) if it accepts an employer's offer of exclusive bargaining representative status and then subsequently bargains with that employer and enters into a collective-bargaining agreement that contains a union-security clause.²⁴

Here, CNA has not demanded recognition from the Employer, and the evidence demonstrates that CNA held itself out as a servicing agent rather than the 9(a) representative. Thus, CNA representatives handled grievances submitted on NUHW forms by NUHW stewards. Additionally, after CNA and the Employer reached an agreement over staffing issues impacted by the opening of a new hospital tower, the CNA bargaining representative signed the agreement as the "NUHW-AFN Union Representative." Thus, because CNA never demanded recognition or acted as though it were the unit's 9(a) representative, it did not violate the Act by dealing with the Employer in its role as NUHW's agent.²⁵

Nor did the Employer recognize CNA as the exclusive bargaining representative. Indeed, when the Employer initially communicated that it was accepting NUHW's designation of CNA as the servicing agent of the unit, it also explicitly stated—to NUHW, CNA, and the unit employees—that it was not recognizing CNA as the unit's 9(a) representative. Throughout CNA's tenure as servicing agent, the Employer has never treated CNA as the incumbent union or the exclusive representative of the AFN unit. Further, when the Employer believed that CNA was overstepping the terms of the servicing agreement, it sent a letter to CNA stating that it was not engaging in servicing activity but rather trying to assume the duties of the formally-selected bargaining representative, which the Employer had not agreed to.

²⁴ *E.g.*, *Dominick's Finer Foods*, 308 NLRB 935, 946-47 (1992) (finding minority union violated 8(b)(1)(A) and 8(b)(2) when it accepted recognition from employers in multi-employer group and further violated those sections of the Act when it received benefits of union-security clause and dues-checkoff provisions of collective-bargaining agreements with same employers), *enforced*, 28 F.3d 678 (7th Cir 1994). *See generally Ladies Garment Workers (Bernhard-Altman) v. NLRB*, 366 U.S. 731 (1961).

²⁵ Although the Employer accused CNA of unlawfully attempting to usurp NUHW's role as the exclusive bargaining representative because CNA had changed the status quo, CNA's conduct was consistent with its role as a servicing agent. Similarly, we conclude that NUHW did not violate Section 8(b)(3) because, contrary to the Employer's allegation, there was no change to the status quo.

Additionally, the Employer did not violate Section 8(a)(2) by denying UNAC access to new employee orientations and the grievance process while granting those privileges to CNA. As mentioned above, CNA was acting as the servicing agent for NUHW when it attended new employee orientations and processed grievances. There is no evidence that CNA engaged in any conduct and that the Employer allowed such conduct outside the realm of CNA's role in servicing the unit. Thus, UNAC did not have a right to access the orientations or process grievances where UNAC was not the exclusive bargaining representative or acting as the agent for the exclusive bargaining representative.²⁶

Accordingly, the unfair labor practices charges should be dismissed, absent withdrawal.

/s/
B.J.K.

²⁶ Cf. *Laub Baking Co.*, 131 NLRB 869, 871 (1961) (recognizing that an incumbent union may have an inherent advantage over a rival union where its contract with the employer or past practice provides rights to access the employer's property and employees). See also *West Lawrence Care Center*, 308 NLRB 1011, 1012 (1992) (although an employer must remain neutral where an incumbent union is challenged by a rival union, it must continue to allow incumbent union access pursuant to contractual access clause).