

**OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management**

MEMORANDUM OM 16-02

October 15, 2015

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

FROM: Anne Purcell, Associate General Counsel

SUBJECT: NLRB ADR Program for Settling Unfair Labor Practice Cases
Pending before the Board

Since December 2005, the National Labor Relations Board's alternative dispute resolution (ADR) program has assisted parties in settling unfair labor practice cases pending before the Board. For parties who have chosen to participate in the ADR program, mediators have assisted parties in reaching settlements in approximately 60% of the cases. The Board approved the parties' settlements in each of those cases. Despite the program's proven track record, many cases that are excellent candidates for the program are not brought to the program by counsel for respondent or the General Counsel.

All are reminded that participation in the Board's ADR program is voluntary, and any party (including the General Counsel) who enters into settlement discussions under the program may withdraw its participation at any time. The Board will provide the parties with an experienced mediator, either a mediator with the Federal Mediation and Conciliation Service or the ADR program director, to facilitate confidential settlement discussions and explore resolution options that serve the parties' interests. Depending on the parties' preference, the settlement conferences will be held in person, telephonically, or by videoconference.

The Board established the ADR program in response to the success experienced by other federal agencies and the federal courts in settling contested cases through ADR, as well as the success of the NLRB's own settlement judge program at the trial level. Features of the Board's ADR program include:

- The Board will stay further processing of the unfair labor practice case for 30 days from the first meeting with the mediator or until the parties reach a settlement, whichever occurs first. Requests for extension of the stay beyond the 30 days will be granted only with the approval of and in the sole discretion of the mediator and the program director upon a showing that such an extension is supported by good cause. However, no case may be in the program for more than 60 days.

- The preferred method of conducting settlement conferences is to have the parties or their representatives attend in person, and the mediator will make every reasonable effort to meet with the participants face-to-face at the parties' location. Settlement conferences by telephone or through videoconference may be held if the parties so desire.
- Parties may be represented by counsel at conferences, but it is not required. Each party must have in attendance, however, a representative who has the authority to bind the party to the terms of a settlement agreement.
- Parties may be asked to submit to the mediator a confidential memo setting forth what is in dispute between the parties, prior settlement efforts, and anything else that the parties would like to bring to the mediator's attention. The memo will be treated as a confidential submission unless the party that prepared the memo authorizes release to the other parties.
- The mediator has no authority to impose a settlement.
- Discussions between the mediator and the participants are confidential, and there will be no communication between the mediator or the program director and the Board on specific cases submitted to the ADR program, except for procedural information such as case name, number, and status.
- Nothing in the ADR program is intended to discourage or interfere with settlement negotiations that the parties wish to conduct outside the program.
- Deadlines for filing pleadings with the Board will be stayed effective the date that the case enters the ADR program. In the event the case is removed from the program, the time period for filing will begin running again from where it left off.
- Settlements reached are subject to approval in accordance with the Board's existing procedures for approving settlements.

All are encouraged to give serious consideration to use of the Board's ADR program where it may be helpful in resolving cases pending before the Board.

If you have any questions regarding the Board's ADR program or this memorandum, please contact your Deputy, AGC or the undersigned.

/s/
A. P.