

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 18-06

August 1, 2018

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

From: Peter B. Robb, General Counsel /s/

Subject: Responding to Motions to Intervene by Decertification
Petitioners and Employees

This memorandum addresses motions to intervene in ULP proceedings by: (1) employees who have filed decertification petitions with a Regional office and where the ULP proceeding may impact the validity of their petitions; and (2) employees who have circulated a document relied upon by an employer to withdraw recognition from a labor organization (collectively referred to as “Proposed Intervenors”). While Regions have not necessarily opposed these motions in every case, where they do, such opposition has been met with mixed results.¹

Regions should no longer oppose timely motions filed at or during ULP hearings by Proposed Intervenors.² Section 10388.1 of the ULP Casehandling Manual states that the General Counsel should not oppose intervention by “parties or interested persons with direct interest in the outcome of the proceeding.” The General Counsel has determined that an individual who has filed a decertification petition with the Regional office, whether said petition is being held in abeyance pursuant to Representation Case Handling Manual Section 11730.4 or has been dismissed subject to reinstatement pursuant to Section 11733.2(a)-(b), has a sufficiently direct interest in the outcome of related ULP litigation such that opposition to his/her motion to intervene is unwarranted. In either situation, the outcome of the ULP could result in the petition being dismissed or not being reinstated. The General Counsel has also determined that an individual who has circulated a document, based upon which recognition has been withdrawn (albeit allegedly unlawfully), has a sufficiently direct interest in the outcome of related ULP litigation, where an analysis under the Board’s decision in *Master Slack Corp.*, 271 NLRB 78 (1984), could

¹ See, e.g., *Veritas Health Services, Inc. d/b/a Chino Valley Medical Center v. NLRB*, No. 16-1058, 2018 WL 3352892 (D.C. Cir. July 10, 2018) (court denied a petition for review filed by employee, finding the ALJ’s denial of intervention caused employee no prejudice, but a concurring opinion noted the lack of standards governing intervention in the Board’s Rules and Regulations and in Board precedent); *Renaissance Hotel Operating Co.*, 28-CA-113793 (ALJ granted the motion to intervene); *Wyman-Gordon Tru-Form*, 04-CA-182186 (intervention was granted, but limited to permitting an employees’ representative to file a brief and object to any questions that breached attorney-client privilege); *Leggett & Platt*, 09-CA-194057 (ALJ’s denial of the motion to intervene was upheld by the Board on special appeal).

² If such a motion to intervene is made prior to the hearing, the Regional Director should refer it to the Administrative Law Judge for ruling. See Section 102.29 of the Board’s Rule and Regulations.

lead to the issuance of a bargaining order. In such cases, opposition to his/her motion to intervene is unwarranted.

In stating the General Counsel's non-opposition to motions to intervene in these circumstances, the following guidelines should apply:

1. Counsel for the General Counsel should state on the record that he/she reserves the right to object if the motion to intervene is granted and the intervenor subsequently engages in conduct that unnecessarily prolongs the proceeding or impedes the General Counsel from presenting its case.
2. The motion to intervene must still be timely. See Fed. R. Civ. P. 24(a), (b)(1); *Nat'l Ass'n for Advancement of Colored People v. New York*, 413 U.S. 345, 366 (1973) (denial of motion to intervene because of untimeliness is determined under all the circumstances and reviewed for abuse of discretion).
3. The foregoing applies to cases in which: the Region has dismissed a decertification petition, subject to reinstatement, because respondent is charged with directly tainting the decertification showing of interest, or sponsoring the decertification petition; the Region is holding a decertification petition in abeyance based on an assertion that the alleged ULP conduct caused the disaffection that led to the decertification petition being filed; or, where an individual's circulation of a document or petition is relied upon by an employer to withdraw recognition.

Should the ALJ deny an individual's motion to intervene in the circumstances identified in this memorandum, and he/she requests permission to file a special appeal, the Region should contact Operations-Management for further instruction.

/s/
P.B.R.