This matter was initially submitted to Advice on the threshold issue of whether an ousted union, which was replaced by another bargaining representative after a Board election and certification, retained any duty of fair representation towards a bargaining unit employee whose pending grievance was filed during the ousted union’s tenure as the Section 9(a) representative. In a case-closing email dated May 15, 2019, during the tenure of the prior General Counsel, we acknowledged that the Board had never explicitly held that an ousted union owes such a duty of fair representation regarding grievances that arose prior to its ouster. However, the General Counsel at that time determined that there was such a duty and that this case represented “a vehicle for the Board to expressly decide the issue.”

This matter was resubmitted to Advice regarding remedial issues, and we issued corresponding case-closing emails dated January 29 and July 28, 2020.

The matter was resubmitted in light of the confirmation of a new General Counsel, for reconsideration of the threshold issue described above. Accordingly, upon further consideration, inasmuch as there is no duty of fair representation in these circumstances under extant law, there is no basis for issuing complaint and the charges should be dismissed, absent withdrawal.

This email closes this matter in Advice.