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# Charges Deferred, Grievances Preferred: NLRB Acting GC Issues New Guidance on Deferring Unfair Labor Practice Charges

**Labor Relations Update** on **August 8, 2025**

On August 7, 2025, the Acting General Counsel of the National Labor Relations Board ("NLRB" or "Board"), William B. Cowen, issued GC Memorandum 25-10 providing revised guidance concerning the deferral of unfair labor practice ("ULP") charges to the grievance and arbitration processes set forth in collective bargaining agreements ("CBA").

The memorandum urges the Regional Offices to focus on whether ULP charges are subject to deferral, whether or not a grievance has been filed. According to the Acting GC, promotion of the deferral doctrine – which has long been recognized as a validation of collectively-bargained dispute-resolution mechanisms and promotion of stability in labor relations – allows for the "judicious" use of the NLRB's scarce resources.

### *Dubo* Deferral – When A Grievance Has Been Filed

The memorandum instructs the Board's 26 Regional Offices to consider, at the **outset** of a ULP investigation, whether deferral is appropriate under *Dubo Manufacturing Corp.*, 142 NLRB 431 (1963) ("*Dubo*"). Under *Dubo*, deferral is appropriate where:

- A grievance was filed under the CBA;
- The allegations of the ULP charge are proper and timely on their face; and
- The preliminary evidence indicates that the allegations of the ULP charge can be resolved through the CBA's grievance and arbitration procedure.

### *Collyer* Deferral – When No Grievance Has Not Yet Been Filed

If the Regional Office determines *Dubo* deferral is inappropriate – likely because no grievance has been filed under the CBA – NLRB investigators must next consider whether the charge should be deferred under *Collyer Insulated Wire*, 192 NLRB 837 (1971) ("*Collyer*"), which instructs that deferral is appropriate where:

- The conduct alleged to be a ULP also constitutes a grievance under the CBA;
- The CBA's grievance procedure culminates in final and binding arbitration; and
- The charged party waives any timeliness defenses that might prevent the processing of a grievance.

The decision to defer a charge pursuant to *Dubo* is final and cannot be appealed; however, the charging party may decline to use the CBA's grievance and arbitration process without the charge being dismissed. In contrast, a deferral under *Collyer* is appealable, but the charge will be dismissed if the charging party declines to use the grievance and arbitration process.

The Acting GC further modified the Board's post-deferral status check process. Previously, after deferring a ULP charge pursuant to either *Dubo* or *Collyer*, the NLRB investigator inquired with the parties about the status of the grievance on a quarterly basis. The memorandum now instructs the charging party to file a deferral status report form with the regional office only twice per year (rather than quarterly): on March 15 and September 15. Failure to timely submit the biannual status report form may result in the charge being dismissed for lack of cooperation.

***Takeaways***

The Acting GC's memorandum streamlines the dispute-resolution process to the benefit of employers. Until now, a request for deferral had to be raised by an employer as a defense in response to a Regional Office's request for evidence letter. Such letters are only sent after a preliminary investigation, which may take several months after a charge is filed. Even after an employer asserted its position on deferral, it could take several additional months for the Regional Office to render a decision.

Placing the onus on the NLRB to determine the appropriateness of deferral at the outset of an investigation should lead to faster and more efficient resolution of disputes arising with a unionized workforce. Moreover, it will minimize the cost and risk of multi-forum litigation where employers are faced with a grievance and ULP charge involving the same factual allegations.

We will continue to monitor updates at the NLRB.

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