



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

January 14, 2013

[REDACTED]

Re: United Nurses Associations of
California/Union of Health Care
Professionals
(Sharp Grossmont Hospital)
Case 21-CB-015107

Dear [REDACTED]:

Your appeal from the Acting Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied.

Apart from the issue of whether the Board's decision in *Los Angeles Times*, 357 NLRB No. 66 (Aug. 25, 2011), definitively answers the question of whether the instant union security clause is lawful, the Board's precedent established in *Krambo Food Stores*, 106 NLRB 870 (1953) and its progeny suggests that devices short of discharge are permissible means of enforcing a union security clause in the absence of the additional right to demand discharge. A reading of *Krambo Foods* and its progeny suggests that employers and unions may not impose lesser forms of discipline on employees who have failed to pay agency fees while also reserving the union's right to demand the employee's discharge. Indeed, the Board in *Krambo Foods* stated that, "Nothing in the Act or its legislative history persuades us that the union shop provisos ...were designed to give employers and unions a license to use various discriminatory devices, short of discharge to coerce an employee to join the union while still holding over his head the alternate threat of discharge..." *Id.* at 877 (emphasis added). The Board has never held that devices short of discharge were impermissible means of enforcement in the absence of a reservation of the right to demand discharge.

In the instant case, the enforcement clause includes a right of the union to file a civil action, but does not contain the concurrent right to request a discharge. Hence, since the penalty for nonpayment of Union fees is solely a lesser penalty other than discharge, the clause in this case is deemed to be lawful under the Act. Nothing further raised on appeal warrants a conclusion contrary to that of the Acting Regional Director.

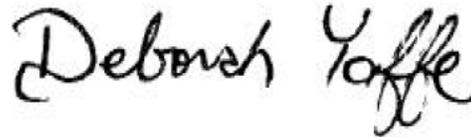
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Accordingly, further proceedings are unwarranted.

Sincerely,

Lafe E. Solomon
Acting General Counsel



By:

Deborah Yaffe, Acting Director
Office Of Appeals

cc: OLIVIA GARCIA
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