

10506 Initiation of Compliance Actions**10506.1 Overview**

From the time the Region finds merit to an unfair labor practice charge, compliance actions are appropriate to establish remedies and to achieve compliance with them. The Region should respond to inquiries and encourage settlement discussions at anytime during unfair labor practice proceedings. The Region should communicate with the parties in order to initiate compliance actions at the following stages of unfair labor practice proceedings. See Section 10508 for an in-depth discussion of actions to be taken after issuance of complaint.

10506.2 Upon the Region's Determination of a Violation or Issuance of a Complaint

After the Region determines that a violation has occurred, appropriate remedial action must also be determined, both to support immediate settlement discussions and in anticipation of eventual compliance proceedings. In addition to the standard remedial actions (such as reinstatement, make-whole, cease and desist language, and posting of a notice), the Region should consider whether special remedial actions are appropriate. Examples of such special remedies include:

- requirement that a representative of the respondent read the Notice to Employees,
- compensatory damages, in addition to backpay, to fully make-whole discriminatee,
- front pay, and
- *Fieldcrest Cannon* type remedies for certain violations that occur during organizing campaigns. See OM 99-79.¹

A. *Correctly Identifying the Respondent*: If Board orders and court judgments do not correctly identify the respondent, the Agency's efforts to obtain compliance through collection proceedings and/or contempt are severely hampered.

- In cases involving corporations, the correct name of the respondent can be obtained from various sources including the Secretary of State's office in the state where the respondent is incorporated.
- In cases involving sole proprietorships and partnerships, the case caption and the jurisdictional pleadings should include the full names of all individuals liable for compliance. Sections 10508.3 and 10508.4. See also ULP Manual Section 10264.3.
- In cases involving labor organizations, the correct name of the union can be obtained from various sources including the Bureau of National Affairs publication "Directory of U.S. Labor Organizations" which is retained in each Region.

¹ *Fieldcrest Cannon*, 318 NLRB 470 (1995).

Upon issuance of an administrative law judge's decision or a Board order, Regions should confirm that the cases are correctly captioned and that the order section of the decision correctly identifies the labor organization, corporation, or individuals who are personally liable for compliance.

B. Determining and Pleading Remedies: Upon determination that a charge has merit, the Region should also fashion the appropriate remedy for such conduct in order to pursue settlement discussions and in anticipation of eventual compliance proceedings.

If the remedy sought would affect an entity not otherwise named in the complaint, that entity should be added to in the complaint as a party in interest. ULP Manual Section 10264.4.

If the remedy sought is novel or unique, the complaint should specifically request such a remedy in addition to other appropriate relief. ULP Manual Sections 10266.1, 10407.

C. Consolidating Compliance Issues with Complaint: Whenever possible, Regions should consider consolidating compliance issues (generally reserved for a subsequent compliance specification) with unfair labor practice issues in a complaint. Such consolidation may result in substantial conservation of time and resources. Sections 10508.3 and 10646.3 set forth the criteria for this determination.

D. Including Backpay Computations in the File: Region's files in meritorious cases should contain documentation clearly describing the Region's assessment of the backpay due. In rare situations, detailed computations may not be required if they are not feasible or worth the investment of time. However, even in these circumstances, a reasonable effort should be made to estimate backpay. In certain situations, computations are not necessary if the Region has concluded that the respondent is unable to pay any amount owing. Computations are also not necessary where the charging party or discriminatee expresses an unwillingness to cooperate further in Agency proceedings. In cases involving bankruptcy, however, it may be necessary for the Region to compute backpay for the purpose of filing a Proof of Claim. In the event the Region determines it is not feasible or necessary to calculate backpay, the file should clearly document this determination and set forth the reasons that such determination was made.

E. 10(j) Protective Orders: If the respondent fits the profile of a party likely to avoid or frustrate compliance by closing down operations or liquidating assets, the Region should consider whether a Section 10(j) protective order is appropriate. See Section 2.1(14) of the 10(j) Manual (available on the intranet). A checklist of factors that should be considered as part of the profile can be found on the Contempt Litigation & Compliance Branch web page on the intranet. After a Board order issues, the Region should consider whether 10(e) injunctive relief is appropriate pending circuit court review of the Board's application for enforcement.

10506.3 Maintaining Contact with Discriminatees and Identifying Unnamed Discriminatees

The Compliance Officer should receive a copy of all complaints at the time they issue. At the same time, the Compliance Officer should receive a list of names and addresses of all alleged discriminatees named in the complaint. In situations where

alleged discriminatees have not yet been identified at the time complaint issues, immediate efforts should be undertaken to identify and locate all such individuals. The Region is responsible for maintaining contact with discriminatees during the course of unfair labor practice proceedings, for advising them of their responsibilities, and for obtaining information from them that will be needed to determine backpay. Sections 10508.8 and 10550.2.

10506.4 Monitoring Ability to Comply

At all times during the course of unfair labor practice proceedings, the Region is responsible for monitoring the charged party's ability to comply with anticipated requirements. The Region should be alert to developments that suggest that a charged party will not be able to comply, such as a closing of operations, filing for bankruptcy, or sale of the business. Such issues should be promptly investigated. Section 10508.6. If the Region obtains evidence that the respondent will be unable to satisfy its compliance obligations, the Region should determine whether there is another party that should be alleged as derivatively liable for respondent's compliance obligations. See Section 10682 regarding derivative liability.

10506.5 Following an Informal Settlement Agreement

Every informal settlement agreement should clearly specify all remedial actions required. As soon as the Regional Director has approved an informal settlement agreement entered into by all parties, instructions to comply should be sent to the charged party. Section 10594.

See Section 10506.10 regarding procedures for initiating compliance when the charging party does not enter into an informal settlement agreement.

10506.6 Following a Formal Settlement Stipulation

Action to obtain compliance with a formal settlement stipulation should be undertaken when the formal settlement stipulation has resulted in issuance of a Board order. Section 10596 and ULP Manual Sections 10164–10170.

10506.7 Following an Administrative Law Judge's Decision

When the General Counsel decides not to file exceptions to an administrative law judge's decision, the Compliance Officer should immediately obtain the positions of the parties on voluntary compliance. When the charged party commits to compliance and no exceptions are to be filed, compliance steps should commence without waiting for issuance of a Board order. Compliance actions taken prior to the Board order, including any period of the notice posting, should be accorded full recognition as compliance with the Board order. Section 10595. Where the Region determines that corrections to the administrative law judge's decision are necessary, exceptions to the administrative law judge's decision should be filed. Section 102.46 of the Board's Rules and Regulations.

10506.8 Following a Board Order

The Compliance Officer should initiate compliance action with the remedial provisions of the Board's order as soon as it issues. Section 10596. Where the Region determines that corrections to the Board order are necessary, a motion for reconsideration

of the Board's decision and order should be filed. Sections 102.48 and 102.49 of the Board's Rules and Regulations.

10506.9 Following Entry of a Court Judgment

The Compliance Officer should begin compliance efforts immediately on entry of the judgment. If the court only partially enforces the Board order, compliance should ordinarily be sought immediately with respect to the portions enforced. Section 10632.

If the respondent seeks certiorari, compliance efforts should only be deferred where a court has issued a stay of the Mandate and/or when certiorari is granted.² A respondent that refuses to comply is subject to contempt proceedings when a stay has not been sought or has been denied. Sections 10616 and 10632 set forth procedures for initiating contempt proceedings.

When stay of Mandate has been issued by the court of appeals, Division of Operations-Management clearance should be sought before demanding compliance action.

10506.10 Compliance Procedures While Appeals, Exceptions, and Motions for Reconsideration are Pending

Compliance efforts should not be undertaken during the appeal period of a unilateral settlement agreement, when the Region or charging party is filing exceptions to an unfavorable decision of an administrative law judge, or while a motion for reconsideration of a Board order is pending, without advising the respondent that the final ruling may cause compliance requirements to be altered.

10506.11 Following Dismissal of Unfair Labor Practice Proceedings

Compliance proceedings are initiated only to effectuate remedies based on findings of violations of the Act. Thus, whenever an unfair labor practice proceeding leads to dismissal of allegations of unlawful conduct, all compliance actions should cease.

² *McCurry v. Allen*, 688 F.2d 581, 586 (8th Cir. 1982), citing *Stern & Gressman, Supreme Court Practice*, at 847 (5th Ed. 1978).